

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

-----X  
UNITED STATES, et al., : Civil Action No.:  
: 1:23-cv-108  
Plaintiffs, :  
versus : Tuesday, September 10, 2024  
: Alexandria, Virginia  
GOOGLE LLC, : Day 2 p.m.  
: Pages 1-107  
Defendant. :  
-----X

The above-entitled bench trial was heard before the  
Honorable Leonie M. Brinkema, United States District Judge.  
This proceeding commenced at 2:00 p.m.

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P R O C E E D I N G S

THE COURT: All right. Mr. Friedman, you're still on the stand.

DIRECT EXAMINATION (resumed)

Q Mr. Friedman, before we broke for lunch, we were talking about products that Goodway uses for brand safety and fraud and malware protection.

Do you recall that?

A I do.

Q And I believe that you mentioned that Google has said that they have features that do some brand safety and antifraud protection in their products.

A Yes.

Q Does Goodway rely on Google as the primary source of protection from fraud and malware?

A No.

Q And the other products that you use for fraud protection and malware, are you able to turn those off for certain purchases and not for others?

A     Yeah, I want to clarify because malware and fraud are very, very different. And so malware is not something we typically deal with much. The technology providers themselves typically handle that top to bottom. Ad fraud, which is different, is something that we have to pursue ourselves.

Cross-Examination - J. Friedman

1 Q And so for ad fraud is Google one of the tools that you  
2 primarily rely on?

3 A No.

4 Q And the tools that you do rely on, are you able to turn  
5 those on or off depending on which purchases that you are  
6 making?

7 A Yes.

8 Q Do you use those tools when making display ad purchases  
9 through AdX?

10 A Yes.

11 Q Do you use those tools when making display ad purchases  
12 through other exchanges?

13 A Yep.

14 MS. CLEMONS: That's all I have. I'll pass the  
15 witness.

16 MS. GOODMAN: May I proceed?

17 THE COURT: Yes.

18 CROSS-EXAMINATION

19 BY MS. GOODMAN

20 Q Good afternoon, Mr. Friedman. I'm Martha Goodman. I'm  
21 a lawyer for Google. I'm going to be asking you some  
22 questions today.

23 You wrote a book titled "30 Days to Paid Digital  
24 Media Expertise," correct?

25 A Yes.

Cross-Examination - J. Friedman

1 Q And the latest edition was published in 2016, right?

2 A I don't recall.

3 Q Okay. Do you recall there being eight editions of the  
4 book?

5 A I do.

6 Q And the last edition was the eighth?

7 A Yes.

8 Q You also wrote a book in 2019 titled "Prove Your  
9 Advertising Works," right?

10 A Yes.

11 Q And I want to talk a bit about your books. We'll start  
12 with the book "30 Days to Paid Digital Media Expertise." In  
13 that book, you tell advertisers in the chapter titled  
14 "Social Platforms - Instagram, Twitter, Facebook, and More"  
15 that all media is just media, right?

16 A I don't recall.

17 Q Okay. Let's look at Tab 4 in the binder.

18 THE COURT: Wait.

19 Whether you told them that or not, is that your  
20 view that all media is the same?

21 THE WITNESS: Can I contextualize it?

22 THE COURT: Yes.

23 THE WITNESS: Yeah, so all media must work toward  
24 a marketer's goal. And --

25 THE COURT: From a marketer's standpoint?

Cross-Examination - J. Friedman

1 THE WITNESS: Right. From a --

2 THE COURT: They have other purposes in life.

3 THE WITNESS: Right. Now, each have different  
4 purposes and serve different purposes, but from a marketer's  
5 standpoint, they should not be biased toward one medium or  
6 another based on the performance as long as performance is  
7 considered.

8 BY MS. GOODMAN

9 Q If you could turn to Tab 4, please, in your binder.

10 A Yep.

11 Q To refresh your recollection --

12 A Sure.

13 Q -- this is the chapter that I was just referencing on  
14 social platforms, right?

15 A Okay. Sure.

16 Q And under "Planning," it says all media is just media,  
17 right?

18 A It does.

19 Q And that's a simplistically profound point of view?

20 A I thought so at the time.

21 Q Do you think that today?

22 A I think there's more nuance today.

23 Q And it's your view that, while social media has  
24 different aspects than TV or even other digital media, it's  
25 not time to start over and rewrite the rule book?

Cross-Examination - J. Friedman

1 A Absolutely.

2 Q And so what you tell advertisers is, for any new ad  
3 product, to ask yourself does it help me better identify my  
4 audience and is it likely to generate a better return on the  
5 money I'm spending on it? Right?

6 A Yes.

7 Q And you tell advertisers notice this is not asking if  
8 it helps get a better price, correct?

9 A Correct.

10 Q So the advice you give advertisers is to focus on the  
11 audience, the return on investment, and not on price,  
12 correct?

13 A There's more nuance to it than that, but literally that  
14 is what it says.

15 Q That's what's in your book, right?

16 A Yes.

17 Q Now, you've also advised digital advertisers to buy  
18 users and not websites, right?

19 A That is one piece of advice.

20 Q Okay. And that's in the piece of advice you have  
21 given -- one piece of advice you've given to advertisers,  
22 right?

23 A Well, let me clarify.

24 Q No. I'm just asking, sir -- I'm sorry -- if that is  
25 one piece of advice. If my colleague would like you to



Cross-Examination - J. Friedman

1 clarify, she can ask you.

2 But I just want to know is one piece of advice  
3 you've given advertisers to buy users and not websites?

4 A Well, if it says that, then that was a piece of advice  
5 I gave.

6 Q Okay. Well, let me refresh your recollection. If you  
7 turn to Tab 7 in your binder, please.

8 And you see this is also a page from your book --

9 A Yep.

10 Q -- "30 Days to Paid Digital Media Expertise." And at  
11 the top you wrote, "As we've mentioned many other times in  
12 this book, it's important to focus on buying users and not  
13 sites when it comes to online marketing," correct?

14 A Correct. That's what it states.

15 Q Okay. And so here, are you telling advertisers to buy  
16 their audience wherever they may be found?

17 A I don't believe I say that.

18 Q Okay. But is that the sum and substance of the advice  
19 that you're giving here, to buy users wherever they may be  
20 found and not sites?

21 A No. I would not say that is the sum -- I don't know  
22 what you just said, sum and substance. But --

23 Q Okay. And you are aware that there are seven out of  
24 ten U.S. adults on Facebook today, right?

25 A I'm not aware of the exact number.

Cross-Examination - J. Friedman

1 Q Does that sound to be an about correct percentage,  
2 seven in ten American adults on Facebook?

3 MS. GOODMAN: Objection, Your Honor. We've  
4 established that he's not aware.

5 THE COURT: I'll sustain the objection.

6 BY MS. GOODMAN

7 Q And so social media platforms like Facebook have a very  
8 wide audience, correct, a large audience?

9 A I would say that, yes.

10 Q Okay. And it is likely that the audience that is  
11 available to advertisers on a social network like Facebook  
12 would include some Ritz-Carlton customers as well as Ramada  
13 customers, correct?

14 A Yes.

15 Q And I'm referring back to the analogy that you offered  
16 in your direct exam this morning.

17 And so when you were comparing on your direct  
18 examination to buying direct -- to buying display ads -- to  
19 buying social media ads as a comparison between the Ramada  
20 and the Ritz-Carlton, you're really making a comparison  
21 between two different sites in two different parts of town,  
22 right?

23 A I'm making a comparison of two different sites.  
24 Whether or not they're in the same part of town is  
25 irrelevant.

Cross-Examination - J. Friedman

1 Q Well, that is what you said on direct, sir, right?

2 That the two different sites, Ritz-Carlton and Ramada, would  
3 likely be in two different parts of town?

4 A They often will, yes.

5 Q Okay. And so when you're telling advertisers to buy  
6 users, you're not telling them to focus on the site where  
7 they are but rather wherever they may be found, correct?

8 A That is what's written.

9 Q Now, you spoke on direct exam about the marketing  
10 funnel, correct?

11 Do you recall that?

12 A Yes.

13 Q Okay. And I want to put up a demonstrative that we've  
14 used in court before but you haven't seen before.

15 Matt, could you put up -- this is Lowcock  
16 Demonstrative 1.

17 A Yep.

18 Q Does this look to you like a very simplistic schematic  
19 of the marketing funnel?

20 A Yes.

21 Q And you agree that the upper funnel goals or the top  
22 funnel goals usually focus on awareness?

23 A Typically, that is -- that is one common outcome or  
24 goal.

25 Q Okay. So you agree that upper funnel goals usually

Cross-Examination - J. Friedman

1 focus on awareness?

2 A I wouldn't say usually; I'd say that is one common  
3 outcome or goal.

4 Q Okay. Can you turn to Tab 8 in your binder, please.

5 A Yes.

6 Q And do you recognize this as a blog post available on  
7 goodwaymedia.com dated August 21, 2018?

8 A It certainly appears as such.

9 Q Okay. And if I could direct your attention to the  
10 bottom five lines where it says, "Let's dive into which  
11 goals best match the different parts of the sales funnel."  
12 Do you see where I am?

13 A Yes.

14 Q Okay. And you agree your website says, "Upper funnel  
15 goals usually focus on awareness since you're attracting  
16 customers who might not be aware of your product or might be  
17 casually browsing."

18 That's what your website says?

19 A That's what it says.

20 Q Okay. And you have advised advertisers that display  
21 advertising can support upper funnel goals, correct?

22 A It can.

23 Q Okay.

24 Matt, if you could bear with -- or do a little --  
25 follow along with me. If you could put a red box around the

Cross-Examination - J. Friedman

1 upper funnel and put display advertising in that, that would  
2 be helpful as we go along, please.

3 And you've also advised advertisers that other  
4 upper funnel ad channels to help drive awareness include  
5 advanced TV, correct?

6 A That's a possibility, yes.

7 Q Okay.

8 Let's add advanced TV in that red box.

9 And you've advised advertisers that online video  
10 is an upper funnel ad channel to help drive awareness,  
11 correct?

12 A I did at a time.

13 Q Okay. And that's still on your website today, isn't  
14 it?

15 A Apparently so.

16 Q I'm sorry?

17 A Apparently so.

18 Q Okay.

19 Let's add advanced TV. Okay. Great.?

20 MS. GOODMAN: I'm sorry. Online video, please,  
21 Matt, add to the funnel.

22 And you've also advised advertisers that  
23 cross-device display is an upper funnel ad channel to help  
24 drive awareness, correct?

25 A If you point me to where I said that.

Cross-Examination - J. Friedman

1 Q Sure. We're in Tab 8 of your binder still.

2 And if you go to the second page of it, it's  
3 really at the top. Can you just read that first full  
4 sentence --

5 A Yeah. Sure.

6 Q -- into the record beginning "media channels."

7 A "Media channels to help drive awareness include  
8 advanced TV or online video. Cross-device display can also  
9 factor into upper funnel goals by using broader targeting  
10 tactics like site targeting or demographic targeting."

11 Q Thank you.

12 And you advise advertisers that cross-device  
13 display can help reach consumers because they split their  
14 time across all of their devices like mobile phones,  
15 tablets, and desktops, correct?

16 A Yes.

17 Q And you agree that the industry is constantly evolving  
18 to create targeting options that work across multiple  
19 channels, right?

20 A Yes.

21 Q Now, in prior editions of your book "30 Days to Paid  
22 Digital Media Expertise," you outlined consumer targeting  
23 approaches channel by channel, correct?

24 A I don't know.

25 Q You don't remember?

Cross-Examination - J. Friedman

1 A No, I don't remember.

2 Q Okay. But in your 2016 edition, the eighth edition,  
3 you said that that approach was outdated, correct?

4 A I believe you if you're bringing it up, but I don't  
5 remember.

6 THE COURT: You have to step back --

7 THE WITNESS: Oh, sorry.

8 I said I believe her if she's bringing it up, but  
9 I don't remember. I mean, it was eight years ago.

10 BY MS. GOODMAN

11 Q Sure. Let me refresh your recollection. We can go to  
12 Tab 10 of your binder.

13 A Sure.

14 Q This is another excerpt of your book "30 Days,"  
15 "Deploying Targeting and Digital," Chapter 24. Do you see  
16 where I am?

17 A I'm sorry. Page?

18 Q I'm sorry. Tab 10, and go to page 110.

19 A Okay.

20 Q Well, yes.

21 And you see the first --

22 A Ah, yes.

23 Q -- full paragraph in the middle of the page in previous  
24 editions of this book. Do you see where I am?

25 A Yes, I do.

Cross-Examination - J. Friedman

1 Q Okay. And you wrote that "In previous editions of this  
2 book, we outlined targeting approaches channel by channel;  
3 but with the ever-changing technological advances of this  
4 industry, this approach would result in this book being  
5 outdated within two weeks' time."

6 You wrote that, yes?

7 A I did.

8 Q On your direct examination with my colleague  
9 Ms. Clemons, you talked about different forms of advertising  
10 like native, banner, and in-stream video. Do you recall  
11 that?

12 A I do.

13 Q And it's your belief that an effective alternative to  
14 native and banner ads is in-stream video, correct?

15 A I'm sorry. Can you repeat the question.

16 Q Sure.

17 It's your belief that an effective alternative to  
18 native and banner ads is in-stream video, correct?

19 A No. I did not say that. And if I did, I need to  
20 correct myself.

21 Q All right.

22 Well, Matt, if you can please put up Tab 16 on the  
23 screen.

24 And you can turn to it too in your binder,  
25 Mr. Friedman. I asked to put it on the screen because it's



Cross-Examination - J. Friedman

1 kind of hard to read in the binder.

2 This is a Quora post that you made about nine  
3 years ago, correct?

4 A Sure.

5 Q Yeah. And at the top the question is, "Is there an  
6 effective alternative to native and banner ads?"

7 Do you see that?

8 A I do.

9 Q And you wrote, "How about in-stream video?"

10 Correct?

11 A Yes.

12 Q Okay. And you wrote that nine years ago, right?

13 A Yes.

14 Q Now, Quora, you understand, is a social media platform,  
15 right?

16 A Yes.

17 Q And users post questions, and other users post answers?

18 A Yes.

19 Q And the idea of Quora is to connect people who have  
20 knowledge about a subject to the people who are asking  
21 questions about a subject?

22 A Yes.

23 Q Okay. And when you post on Quora, you attempt to be  
24 accurate?

25 A Yes.

Cross-Examination - J. Friedman

1 Q Now, you also talked on direct examination about  
2 programmatic ad buying. And it is correct, sir, that you  
3 can buy programmatically across all types of ad inventory,  
4 correct?

5 A Certainly the majority. I don't know about all, but  
6 I'd have to spend some time thinking about if there are  
7 exceptions.

8 Q Okay. Let's go to Tab 18 in your binder. This is also  
9 a blog posted on your website goodwaymedia.com, yeah?

10 A Yes.

11 Q Okay. And if you go to the second page, about five  
12 lines down, where it says, "All types of inventory are  
13 available programmatically, including premium sites."

14 Do you see that?

15 A I do.

16 Q And that's on your website today?

17 A I don't know. But if you're telling me it is, I have  
18 no reason to not believe you.

19 Q Okay. And the post that I'm just reading from your  
20 blog dated October 26, 2016. Does that lead you to believe  
21 that this has been on your website since 2016?

22 A Yes.

23 Q And so when all types of inventory are available  
24 programmatically, that means an advertiser can buy  
25 programmatically on a site like *The New Yorker* or *The Wall*

Cross-Examination - J. Friedman

1 *Street Journal?*

2 A I don't believe I wrote this article, but I believe it  
3 does say this.

4 Q Okay. Your employee Amanda Benoist wrote this article,  
5 yeah?

6 A Yeah, it looks to be.

7 Q And as CEO you stand by what's on your website?

8 A Broadly, yes.

9 Q And programmatic ad inventory such as preroll on  
10 Twitter, now X, can also be purchased programmatically,  
11 correct?

12 A Correct. I don't recall.

13 Q All right. Well, let's look back at that Tab 18. Just  
14 a little bit further down on page 2.

15 MS. CLEMONS: Objection, Your Honor. This is  
16 hearsay and improper impeachment. He didn't write this  
17 article.

18 THE COURT: Well, I think it's simply meant to  
19 possibly impeach, right?

20 MS. GOODMAN: That's correct, and to refresh his  
21 recollection as to whether --

22 THE COURT: Overruled.

23 MS. CLEMONS: Thank you.

24 BY MS. GOODMAN

25 Q Okay. So here in the middle of the page it says, "It's

Cross-Examination - J. Friedman

1 no longer unheard of to buy a site like *The New Yorker* or  
2 *The Wall Street Journal* programmatically."

3 Do you see that?

4 A Yes.

5 Q "As well as preroll on Twitter." Do you see that?

6 A I do.

7 Q "And hyperlocal mobile inventory." Do you see that?

8 A I do.

9 Q Okay. So all of those kinds of ads can be bought  
10 programmatically, correct?

11 A At that time, that's what Amanda said.

12 Q All right. And how about today? Can those types of  
13 inventory be bought programmatically today?

14 A I don't believe X can be bought programmatically, but I  
15 don't know specifically. It may be available on some  
16 platforms; but the others, by and large, yes.

17 Q And programmatic advertising allows an advertiser to  
18 streamline all of those buys programmatic on *The New Yorker*,  
19 *The Wall Street Journal*, preroll on Twitter, and hyperlocal  
20 mobile inventory into a single platform, right?

21 A Is that specifically what it says?

22 Q Sure. I can refresh your recollection that that is  
23 what it says.

24 If you go back to the first page at the very  
25 bottom, "programmatic allows you to streamline all of that

Cross-Examination - J. Friedman

1 into a single platform."

2 Do you see that?

3 At the very bottom.

4 A Oh. But that's not referring to what you just said  
5 before. This says, "programmatic allows you to streamline  
6 all of that," referring to the lines above, which are  
7 traditional ad buying, negotiating a rate, signing an IO,  
8 running separate formats, and trafficking multiple tags.

9 Q Okay. If you turn back to page 2.

10 A Yep.

11 Q With programmatic -- I'm sorry. I'm in the middle of  
12 the page. It's correct, sir, that programmatic is a  
13 one-stop shop to access global inventories across display,  
14 mobile, and TV, correct?

15 A Yes. That's what it says.

16 Q And you stand by that?

17 A Today maybe not as entirely; but back then, I think  
18 that was a reasonable thing to believe.

19 Q In 2016 that was a reasonable thing to believe?

20 A Yes.

21 Q Okay. You also testified on direct examination about  
22 programmatic direct. Do you recall that?

23 A I do.

24 Q Is that another way of -- another term for programmatic  
25 guaranteed?

Cross-Examination - J. Friedman

1 A Yes.

2 Q Okay. And it is true, sir, that programmatic direct  
3 can be a mix of open auction and private deals, correct?

4 A No, not to how I would define it.

5 Q How would you define it?

6 A So if programmatic direct equals programmatic  
7 guaranteed, then that bucket is a direct buy with a specific  
8 publisher to -- and does not -- may or may not involve  
9 decisioning, but it's a guaranteed amount of money for a  
10 guaranteed amount of delivery.

11 Q Okay. So -- but it is true, sir, that programmatic  
12 direct deals and open auction deals can be a mix -- can be  
13 mixed together, correct?

14 A Yes.

15 Q Okay. So, for example, a programmatic direct deal  
16 could offer some priority over premium ad inventory in an  
17 open auction before that ad inventory is offered publicly?

18 A At the time, that may have been the case. I think  
19 things have changed significantly.

20 Q And when you say "at the time," which time period are  
21 you referring to?

22 A Pre-2018.

23 Q Okay. Now you testified on direct examination about  
24 the features available in DSPs as well as in advertiser ad  
25 networks.

Cross-Examination - J. Friedman

1 Do you recall that?

2 A I do.

3 Q I believe you testified -- I just want to make sure I'm  
4 on the same page -- that you're not the person at Goodway  
5 Group going in and using all of the features. Is that  
6 right?

7 A That is correct.

8 Q So you don't go in and use DSPs?

9 A I don't log into the interface and run campaigns,  
10 correct.

11 Q And you don't log into the interface on advertiser ad  
12 networks and run campaigns?

13 A I do not.

14 Q Now, another thing you said when speaking about  
15 advertiser ad networks was that -- I believe in the response  
16 to a question from the Court -- was that the computer is  
17 figuring out how many times to show an ad? Do you recall  
18 that?

19 A That's my understanding, yes.

20 Q But you haven't gone into the interface to figure out  
21 if that is true?

22 A Correct.

23 Q And so to the best of your understanding, is it true  
24 that the computer who's figuring out -- or that is figuring  
25 out how many times to show an ad, that that computer is also

Cross-Examination - J. Friedman

1 deciding whether to show the ad on the web or in a mobile  
2 format or on connected TV, for example?

3 A It depends on the kind of ad network.

4 Q Some kinds of ad networks can do that?

5 A Can you repeat the channels?

6 Q Well, let's just -- for web and mobile, for example, an  
7 ad network -- some ad network --

8 A Yes.

9 Q -- computer -- computer power can figure out whether to  
10 put it on a website or on a mobile app -- mobile site --

11 A It will make the decision.

12 Q And although you're not the person who uses the tools,  
13 you're familiar with DV360?

14 A I'm familiar with it as a product, yes.

15 Q And you are aware that DV360 supports multiple ad  
16 formats, including display, native, in-app, CTV, video, and  
17 audio?

18 A I am.

19 Q And although you are not the person at Goodway Group  
20 going into Google Ads, for example, you are aware that  
21 Google Ads supports Google's owned and operated properties,  
22 including Search, YouTube, and Gmail?

23 A Yes.

24 Q And you are aware that some ad buyers use DV360, use  
25 Google Ads, and some use both?



Cross-Examination - J. Friedman

1 A Yes.

2 Q And you're aware that buyers who use Google Ads are  
3 free to use buying tools other than Google Ads, correct?

4 A Yes.

5 Q And so you would agree that buyers who use Google Ads  
6 are free to conduct as much of their business as they want  
7 using other buying tools?

8 A Free to? Yes.

9 Q And you are aware that AdX also supports desktop,  
10 mobile, and video digital advertising?

11 A Yes.

12 Q And you're aware that buyers who submitted bids into  
13 AdX are free to submit bids into other exchanges?

14 A Yes.

15 Q Are you familiar with Adobe's advertising DSP?

16 A I'm familiar that it has existed. I don't know what  
17 the current state of it is.

18 Q Okay. So are you aware, sitting here today, whether it  
19 supports connected TV video, display, native, audio, and  
20 search campaigns?

21 A I'm not.

22 Q And you're aware of Microsoft's DSP?

23 A Yes.

24 Q And sitting here today, are you aware whether or not  
25 Microsoft's DSP allows buyers to buy search, display,

Cross-Examination - J. Friedman

1 native, video, CTV, digital Avocom, gaming, audio, and  
2 social?

3 MS. CLEMONS: Objection. Foundation.

4 THE COURT: Well, it's not foundation. It's a  
5 compound question.

6 But are you able to answer that question or not?

7 THE WITNESS: I can say that that's a reasonable  
8 belief. I don't know exactly each single one.

9 THE COURT: Which one of those are you more  
10 confident in as to the Microsoft DSP?

11 THE WITNESS: For the Microsoft DSP, the two that  
12 I'm not -- I don't know -- familiar or as familiar with  
13 would be connected TV and streaming audio.

14 BY MS. GOODMAN

15 Q But your best understanding is that Microsoft's DSP  
16 permits ad buyers to buy search, correct?

17 A Technically, yes.

18 Q And display?

19 A Yes.

20 Q Native?

21 A Yes.

22 Q Video?

23 A Yes.

24 Q Digital out-of-home?

25 A I believe so.

Cross-Examination - J. Friedman

1 Q Gaming?

2 A I believe so.

3 Q And social?

4 A That, I don't know.

5 Q LinkedIn?

6 A I would guess, yes.

7 Q Now, you have advised advertisers that Google and its  
8 channel partners' rates are very competitive for a  
9 full-stack product with an integrated DSP, correct?

10 A I may have said that.

11 Q Okay. Let's look at Tab 29 in your binder. And this  
12 is another Quora post.

13 A Okay.

14 Q And if you look at the third paragraph on the post --

15 A Yep.

16 Q -- does that refresh your recollection that you have  
17 publicly said, "Google and its channel partners' rates are  
18 very competitive for a full-stack product with an integrated  
19 DSP"?

20 A I did write that.

21 Q And you wrote that nine years ago?

22 A Yep.

23 Q So roughly 2015?

24 A Yes.

25 Q And you also wrote nine years ago, in 2015, that "There

Cross-Examination - J. Friedman

1 is so much more benefit to being on DVM than just AdX  
2 access," correct?

3 A I did write that.

4 Q And DVM there refers to DV360 or it's the same thing?

5 A I believe that's a consecutive naming.

6 Q Okay. And that was your belief nine years ago, right?

7 A Yes.

8 Q I want to talk about another ad tech tool called  
9 supply-side platforms.

10 You're familiar with that tool?

11 A Yes.

12 Q It's a digital system that ad publishers use to make  
13 their properties available for bidding and ad placements?

14 A Yes.

15 Q And it's your view that a sell-side platform or  
16 supply-side platform business model resembles that of an ad  
17 network, correct?

18 A In part.

19 Q And the way that it resembles an ad network is that it  
20 aggregates ad impression inventory, correct?

21 A Correct.

22 Q And do you agree that supply-side platforms are  
23 sometimes called ad exchanges and sometimes ad exchanges are  
24 called supply-side platforms?

25 A I do.

Cross-Examination - J. Friedman

1 Q And as to ad exchanges, it is your view that their  
2 business model and practices may also include features which  
3 are similar to those offered by ad networks?

4 A There might be overlap, yes.

5 Q And an ad exchange is similar to an ad network in that  
6 it can provide aggregated inventory to advertisers?

7 A Yes.

8 Q And it is correct, sir, that ad exchanges can sell to  
9 buyers directly, correct?

10 A That has changed at various times, but today the answer  
11 is yes.

12 Q Okay. And that was the answer in 2016, correct?

13 A I don't remember exact ons and offs. It's gone on and  
14 off.

15 Q Okay. If you --

16 A At some point, historically, yes.

17 Q All right. And so to refresh your recollection, please  
18 turn to Tab 22 in your binder at page 61. This is another  
19 excerpt of your book 30 Days?

20 A Yep.

21 Q Eighth edition.

22 First, second full paragraph under "Sales Strategy  
23 and Approach." Do you see where I am?

24 A I do.

25 Q And you see that the second sentence in that paragraph

Cross-Examination - J. Friedman

1 reads, "Exchanges do sell to buyers directly but typically  
2 only through a self-service interface," correct? That's  
3 what the book says?

4 A That's what the book says.

5 Q And that's what you wrote in 2016?

6 A Yes.

7 Q And that was true then?

8 A Typically, that is true. And that's what I wrote,  
9 "typically."

10 Q Through a self-service interface?

11 A Typically, yes.

12 Q Okay. So the typical way that exchanges sell to buyers  
13 directly is through a self-service interface?

14 A That's what I wrote. I don't remember the state of the  
15 industry at that time.

16 Q Understood. But my question, sir, is really just to  
17 make clear, your testimony is that the "typically" only  
18 talks to the method of buying directly in your book,  
19 correct?

20 A Yeah.

21 Q All right. Now let's go to ad networks.

22 A Oh, I'm sorry. Can I restate?

23 Q If you wish to reclarify, you may do so.

24 THE COURT: That can be done on redirect.

25 THE WITNESS: Okay.

Cross-Examination - J. Friedman

1 BY MS. GOODMAN

2 Q It is also your view that ad networks, advertiser ad  
3 networks, provide a means to aggregate inventory and  
4 audiences from multiple sources into a single buying  
5 opportunity for media buyers?

6 A Yes.

7 Q And it's also your view that ad network business models  
8 may include features that are similar to those offered by ad  
9 exchanges?

10 A Do you have any examples?

11 Q Well, I can refresh your recollection with your book  
12 again, sir. Tab 22.

13 A Okay.

14 Q And let's look at page 59, 58 over to 59.

15 A Okay.

16 Q And if you look at the last sentence of that little  
17 section titled "Ad Network," the last sentence reads, "Ad  
18 networks' business models and practices may include features  
19 similar to those offered by ad exchanges."

20 Did I read that right?

21 A Yes, you did.

22 Q And that was true when you wrote it?

23 A That's what I believed, yes.

24 Q And that was in 2016?

25 A I believe so, yes.

Cross-Examination - J. Friedman

1 Q And so when ad networks provide a means to aggregate  
2 inventory in audiences from numerous sources into a single  
3 buying opportunity for media buyers, what you're saying  
4 there in your book is that the ad network compiles publisher  
5 inventory, right?

6 A Yes.

7 Q And you're not saying that there are unique advertisers  
8 available in ad networks; is that right?

9 A Advertisers or publishers?

10 Q Advertisers.

11 A There are not unique advertisers available -- no.

12 Q So you are not saying that?

13 A I don't, no.

14 Q Now, in 2016 your belief was that ad networks were put  
15 out of business by SSPs and ad exchanges, correct?

16 A I think that their business model was made far less  
17 relevant.

18 Q Okay.

19 THE COURT: Again, Mr. Friedman, please keep your  
20 voice up.

21 THE WITNESS: Oh, I'm sorry.

22 MS. GOODMAN: All right. Matt, can you put up  
23 Tab 24, which is another excerpt from Mr. Friedman's book.  
24 And go to the second page of the document and blow up that  
25 second paragraph, please.



Cross-Examination - J. Friedman

1 BY MS. GOODMAN

2 Q See in the middle of the page you wrote, "Ad networks  
3 were then largely put out of business by SSPs/ad exchanges,  
4 who automated this same process for significantly lower  
5 fees."

6 Did I read that right?

7 A You did.

8 Q And that's what you wrote at the time?

9 A I did.

10 Q And that was your view in 2016?

11 A Yes.

12 Q Okay.

13 You can take that down, Matt.

14 It was also your view in 2016 that ad networks had  
15 been obsolete for at least four years, correct?

16 A Ad networks themselves, I don't know. Most of the  
17 practices coming at the time, yes.

18 Q Okay. Well, let's look at Tab 27 in your binder.

19 And, Matt, you can put this one up on the screen  
20 too, please. I'm sorry. Yes, 27.

21 Okay. And this is another Quora post that you  
22 wrote eight years ago in 2016, right?

23 A Yeah.

24 Q All right.

25 A Yes.

Cross-Examination - J. Friedman

1 Q And the question asked, "How does an ad network get  
2 publishers and advertisers?"

3 And in response you wrote, "The problem with ad  
4 network questions and why you probably don't get good  
5 answers is that ad networks have been obsolete for at least  
6 four years."

7 You wrote that?

8 A I did.

9 Q You believed it at the time?

10 A There's more nuance, but if it's yes or no, yes.

11 Q Okay. And so as of 2016, when you wrote this post, it  
12 was your view that ad networks had been obsolete since 2012,  
13 correct?

14 A Yes.

15 Q You mentioned on direct examination that Trade Desk --  
16 that's a DSP, or that is a company that has a DSP?

17 A Correct.

18 Q And you know its chief revenue officer Jed Dederick?

19 A I've met him, yes.

20 Q Would you agree with me that The Trade Desk competes  
21 with Google?

22 A Yes.

23 Q And you know, sir, that The Trade Desk provides  
24 complete access to the open internet, evaluating millions of  
25 impressions every second, powering comprehensive

Cross-Examination - J. Friedman

1 cross-channel digital buys and digital out-of-home audio,  
2 native, connected TV, mobile, and display?

3 MS. CLEMONS: Objection. Compound.

4 THE COURT: Yeah. Break it apart. Sustained.

5 MS. GOODMAN: Okay.

6 BY MS. GOODMAN

7 Q So you are aware that The Trade Desk provides complete  
8 access to open internet, correct?

9 A Yes.

10 Q And that it evaluates millions of impressions every  
11 second, correct?

12 A Yes.

13 Q And you are aware that it powers comprehensive  
14 cross-channel digital buys, correct?

15 A It sounds like marketing speak, but yes.

16 Q Okay. And by cross-channel digital buys, that means  
17 across multiple channels, such as digital out-of-home,  
18 correct?

19 A Yes.

20 Q And audio, correct?

21 A Yes.

22 Q And native, correct?

23 A Yes.

24 Q And connected TV, correct?

25 A Yes.

Cross-Examination - J. Friedman

1 Q Mobile, correct?

2 A Yes.

3 Q Display, correct?

4 A Yes.

5 Q Okay. So all of those channels I named, are those part  
6 of the open internet?

7 A I believe, by and large, yes.

8 Q And in March 2022, your company, the Goodway Group,  
9 became The Trade Desk's first certified service partner,  
10 correct?

11 A Yes.

12 Q And what that meant is that that partnership allowed  
13 small- and medium-size business models to use a demand-side  
14 platform, right?

15 A Yes.

16 Q And I believe you mentioned on direct that some of your  
17 customers are local and regional brands, correct?

18 A Yes.

19 Q Are those similar to small- or medium-size businesses?

20 A Yes, they can be.

21 Q Now, are you aware, sir, that plaintiffs in this case  
22 alleged that advertiser ad networks are, as a practical  
23 matter, the only viable option for smaller advertisers?

24 MS. CLEMONS: Objection. Relevance. Foundation.

25 MS. GOODMAN: I can lay a foundation.

Cross-Examination - J. Friedman

1 THE COURT: I'm going to permit it. Overruled.

2 BY MS. GOODMAN

3 Q So are you aware, sir, that plaintiffs allege in this  
4 case that advertiser ad networks, as a practical matter, are  
5 the only viable option for smaller advertisers?

6 A No, I'm not aware that that's what they're alleging. I  
7 haven't read that in the complaint.

8 Q Have you read the complaint?

9 A I have read parts of it, but I have not read it in  
10 full.

11 Q But you're fairly well-versed in the suit?

12 A I think so.

13 Q Okay. And so your customers, like regional brands or  
14 local brands who are small- and medium-size businesses,  
15 could use, through your partnership with The Trade Desk, a  
16 demand-side platform, correct?

17 A Yeah, I think we're probably operating on two different  
18 definitions of "small."

19 Q What's your definition of "small"?

20 A I think at the tier that we service, then I would say  
21 small is -- I don't know. I don't want to specify a certain  
22 dollar amount per month. But small might be a set of five  
23 or ten banks -- or a bank with five or ten branches for  
24 example, whereas small in the ad network sense can be \$2,000  
25 a month or whatever it may be. It would be much smaller

Cross-Examination - J. Friedman

1 than what we would consider small on a professional level.

2 Q Okay. And you don't know what plaintiffs in this case  
3 consider to be smaller advertisers, do you?

4 A I don't, no.

5 Q And so would you agree with me that accessing The Trade  
6 Desk DSP through the Goodway Group through the certified  
7 partnership is a viable option for smaller advertisers?

8 A Capital S small, no. But smaller larger advertisers,  
9 yes.

10 Q Okay. But you can't really quantify what you mean by  
11 small, smaller, and larger with specificity, can you?

12 A I don't know that there's a hard cutoff.

13 Q Are you familiar with something called "variable price  
14 floors"?

15 A I am.

16 Q And you're aware with variable price floors, publishers  
17 can set different floors across exchanges, correct?

18 A Yes.

19 Q And it was your view that that was an unfortunate  
20 practice in 2016, right?

21 A From a buy-side perspective, yes. I did not like it.

22 Q Right. So from a buy-side perspective, you did not  
23 like that publishers set variable price floors, right?

24 A Yeah, of course not.

25 Q And you thought that was unfortunate?

Cross-Examination - J. Friedman

1 A For my clients, yes.

2 Q You said "of course not." Can you explain?

3 A Yeah. As a buyer, we want everything as low priced as  
4 possible. And so the fact that there were certain buying  
5 paths that might have cost more money was not desirable.

6 On the flip side, there were some paths that cost  
7 less money, and it just took a lot of effort to figure that  
8 out. And that was beneficial.

9 But, yeah, as a buyer, we prefer less games.

10 Q You said you prefer less games as a buyer?

11 A Yeah.

12 Q And variable price floors was a game in your view from  
13 the buy side that publishers engaged in?

14 A It was a way of playing or gaming the system, yes.

15 Q You're also familiar with header bidding?

16 A I am.

17 Q And you've advised advertisers that a major downside of  
18 header bidding is that it can cause increased page latency  
19 and page load times?

20 A I may have said that. I don't know how accurate I now  
21 believe that to be.

22 Q Okay. Let's turn to Tab 31 in your binder.

23 A Sure.

24 Q This is a blog post on your company's website from 2018  
25 titled "Header Bidding Trends."

Cross-Examination - J. Friedman

1 A Uh-huh.

2 MS. GOODMAN: And, Matt, you can put this one on  
3 the screen. It is also really hard to read.

4 And if you go down to the section on the first  
5 page, "Three header bidding containers are standard."

6 Can you blow that up, Matt?

7 BY MS. GOODMAN

8 Q On the second sentence on your blog on your website  
9 says, on this particular page, "One major downside is that  
10 it can cause increased latency and page load time, which can  
11 then negatively impact the user experience."

12 That was true in 2018 when your company published  
13 this blog post?

14 A It was my belief. I don't know whether or not it was  
15 true.

16 Q Okay. You don't state it here as a belief. You state  
17 it as true, yeah?

18 A Stated as such, yes.

19 Q And let's go to the section on client-side wrappers a  
20 little bit further down.

21 And a client-side wrapper just means putting the  
22 header bidding functionality on the client side versus the  
23 service side, right?

24 A I believe so.

25 Q Okay. And when the header bidding functionality is on



Cross-Examination - J. Friedman

1 the client-side wrapper, you advised advertisers that "In  
2 that circumstance, page latency and slow page load times can  
3 still be a big issue if many demand sources are included,"  
4 correct?

5 A That's what I said at the time.

6 Q And that was accurate at the time?

7 A I believed it was.

8 Q If we go to the next page under "New money-making  
9 practices are in play." Here, your blog post says, "Though  
10 questionable, here are a few header bidding practices you  
11 should be aware of and understand."

12 That's something you told advertisers?

13 A Yes.

14 Q And one of those questionable header bidding practices  
15 was bid caching.

16 Do you see that?

17 A Yes.

18 Q And here you told advertisers that bid caching has  
19 "ruffled the digital media industry because it's not a  
20 transparent practice."

21 Do you see that?

22 A Yes.

23 Q And you told advertisers that "sometimes bid caching is  
24 done without buyers' knowledge." Do you see that?

25 A Yes.

Cross-Examination - J. Friedman

1 Q And that was accurate at the time?

2 A Yes.

3 Q And you also said that bid cashing -- sorry. That  
4 impressions, one, from bid cashing can hurt buyers' ad  
5 campaign performance if they are off-strategy or not brand  
6 safe. That was true at the time?

7 A Yes.

8 Q You're familiar with a Google product feature called  
9 enhanced dynamic allocation?

10 A Yes.

11 Q Okay. And enhanced dynamic allocation enabled  
12 real-time bidding to compete with buyers who had direct  
13 guaranteed deals as well as demand sources in the  
14 advertising waterfall?

15 A I don't know if I would say "compete." I would  
16 probably choose a different verb, but...

17 Q What verb would you choose?

18 A Play in the same space.

19 Q Okay. And you believe that enhanced dynamic  
20 allocation, when it was in effect, was not stopping Google's  
21 competitors from innovating, correct?

22 A Yeah. I don't think that practice alone stopped  
23 Google's competitors from innovating.

24 Q And you believed that enhanced dynamic allocation was  
25 not stopping Google's competitors from creating ways they

Cross-Examination - J. Friedman

1 perceived to serve the publisher better?

2 A Correct.

3 Q You're familiar with supply path optimization?

4 A I am.

5 Q Basically, that concept identifies the right path to  
6 bid and win ad inventory at the best price?

7 A Yeah. There's multiple benefits of -- but price is  
8 one.

9 Q Okay. And supply path optimization gives greater  
10 control over the supply chain to advertisers?

11 A It does, yes.

12 Q And that's a good thing for advertisers, in your view?

13 A I think, generally, yes, more control is good.

14 Q Okay. And supply path optimization actually also cuts  
15 the clutter between media buyers and publishers, correct?

16 A It can, yeah.

17 Q That's what your website says, correct?

18 A I believe you if you're telling me it's in the exhibit  
19 here.

20 Q Okay. You can look at Tab 34 just to refresh your  
21 recollection that this is on your website.

22 THE COURT: I think at this point he hasn't -- you  
23 don't need to do this. He's --

24 MS. GOODMAN: Okay. I'll move on.

25 BY MS. GOODMAN

Cross-Examination - J. Friedman

1 Q And Goodway Group has a supply path optimization  
2 arrangement with PubMatic, correct?

3 A I believe so, yes.

4 Q And under that arrangement, PubMatic lowers its fees to  
5 Goodway Group as Goodway Group increases its spending  
6 through PubMatic's buy-side tool -- I'm sorry -- sell-side  
7 tool?

8 A That's the general structure, yes.

9 Q And you instruct the DSPs you're using to bid higher on  
10 PubMatic inventory under this arrangement, correct?

11 A That, I don't -- I don't know if that's currently true.

12 Q Okay. Let's look at Tab 35.

13 A Okay.

14 Q This is an article about your partnership with  
15 PubMatic, yes?

16 A Yep.

17 Q Okay. And if you turn to page 3 --

18 A Yes.

19 Q -- of this article under the ad exchanger ad --

20 A Yep.

21 Q -- it says, "In order to route more spend to PubMatic,  
22 Goodway Group will instruct its DSP to bid higher on  
23 PubMatic inventory using a bid factor tool."

24 Is that accurate?

25 A Yes.

Cross-Examination - J. Friedman

1 MS. CLEMONS: Objection. Hearsay in this article.

2 MS. GOODMAN: I'm using it to refresh his  
3 recollection as to how his arrangement works with PubMatic.

4 THE COURT: I'm overruling that objection.

5 BY MS. GOODMAN

6 Q And this arrangement you have with PubMatic, it's your  
7 belief that, if other ad agencies and exchanges followed the  
8 model, the industry would end up with healthy competition  
9 among top exchanges, correct?

10 A Most top exchanges, yes.

11 Q And you believe that, if other agencies and exchanges  
12 follow this model, the industry will end up with -- will  
13 eliminate the hangers-on that don't provide real value?

14 A In large part, yes.

15 Q And you also believe that, if advertisers or ad  
16 agencies and exchanges did more deals like the one you have  
17 with PubMatic, that everybody could shut off 60 or more of  
18 75 some-odd exchanges, meaning those hangers-on who don't  
19 provide real value?

20 A I do.

21 Q And you believe that, if they shut off 60 of those 75  
22 exchanges, they would not lose an ounce of scale, correct?

23 A I don't know that I would say an ounce, but I would say  
24 they would not lose significant scale.

25 Q Okay. Let's keep looking at Tab 35 just under the

Cross-Examination - J. Friedman

1 next -- the next paragraph on page 3 where you're quoted.

2 Do you see that?

3 A Yep.

4 Q And you said, "Everyone can shut off 60 of those 75  
5 exchanges and not lose an ounce of scale." Is that  
6 accurate?

7 A In marketing speak, yes.

8 Q And you agree that company -- that PubMatic competes  
9 with Google?

10 A There are -- there is some competitive overlap.

11 Q And with your partnership with PubMatic, the Goodway  
12 Group is trying to help PubMatic win every auction they can,  
13 right?

14 A When it's beneficial to both of us, yes.

15 Q Okay. Lets look at Tab 43.

16 THE COURT: Well, is there an inconsistent  
17 statement? I mean, he answered yes.

18 MS. GOODMAN: Well, the statement in this news  
19 article is slightly inconsistent. But I will move on, Your  
20 Honor.

21 THE COURT: All right.

22 BY MS. GOODMAN

23 Q Now, I believe you said that you have read parts of the  
24 complaint in this case, correct?

25 A Yes, limited parts.

Cross-Examination - J. Friedman

1 Q And after the Department of Justice and plaintiffs in  
2 this case filed this lawsuit, you agreed to speak with them?

3 A Yes.

4 Q In February of 2023 you spoke, in fact, with the  
5 Department of Justice lawyers?

6 A I believe that's when it was, yes.

7 Q And you told Department of Justice attorneys, quote,  
8 I'm fairly well versed in the suit, correct?

9 A Yes.

10 Q And you told Department of Justice lawyers that "If  
11 there are any specific parts of the case that you'd like me  
12 to know well, please let me know"?

13 A Yes.

14 Q Okay. And you told the Department of Justice attorneys  
15 that you would keep to what's legally relevant and  
16 beneficial, correct?

17 A Yes.

18 Q And so did you tell the DOJ, when you spoke with them  
19 also, that competition is fierce in digital advertising?

20 A That's something I -- sounds like I would have said.

21 Q Do you recall, in fact, telling DOJ that competition is  
22 fierce in digital advertising?

23 A No, I don't recall.

24 Q Okay.

25 THE COURT: Well, do you believe that?

Cross-Examination - J. Friedman

1 THE WITNESS: Yes, in -- can I be nuanced?

2 THE COURT: Well, what do you believe? From your  
3 experience, is that the case?

4 THE WITNESS: That parts of digital advertising  
5 are fiercely competitive.

6 THE COURT: All right.

7 BY MS. GOODMAN

8 Q Okay. And let's turn to the Tab 47 in your binder.

9 A Okay.

10 Q This is an excerpt from your book "Prove Your  
11 Advertising Works."

12 A Okay.

13 THE COURT: Is there a question?

14 MS. GOODMAN: I'm sorry, Your Honor. Let me ask  
15 one more question while my colleague provides the page I'm  
16 looking for.

17 BY MS. GOODMAN

18 Q Did you also tell the Department of Justice, when you  
19 spoke with them in February 2023, that the programmatic and  
20 social evolution is not even 15 years old and that we're  
21 only in the beginning innovative phases for digital  
22 advertising with a lot more to come?

23 A That sounds like something that I would say.

24 Q Do you recall, in fact, telling them that?

25 A No.



Redirect Examination - J. Friedman

1 Q But that's your belief?

2 A Yes.

3 MS. GOODMAN: I'll pass the witness.

4 THE COURT: All right. Any redirect?

5 REDIRECT EXAMINATION

6 BY MS. CLEMONS

7 Q Mr. Friedman, on cross, Google's counsel asked you  
8 about a statement you made in a book where you said all  
9 media is just media. Do you recall that?

10 A I do.

11 Q Could you explain what you mean or meant by "all media  
12 is just media"?

13 A Yeah. Media is a vehicle for advertisers to reach  
14 consumers. And there are many marketers who have an  
15 emotional affinity for one channel or another.

16 And so that was written in order to convey to  
17 marketers that having an emotional affinity -- and I think I  
18 may have even stated something about looking at the data or  
19 simply valuing the results -- that it's important to look at  
20 the medium for the performance and not for the sake of  
21 having a nonstatistical preference.

22 Q And when you say "look at the media for the  
23 performance," what are you referring to?

24 A If the campaign objective is to create awareness or  
25 brand equity or create sales, it's important to look at what

Redirect Examination - J. Friedman

1 channels will perform in the best way and, really, what mix  
2 of channels, what will perform in the best way.

3 Q And does that mean that, if two channels both increase  
4 awareness, for example, that they are essentially the same  
5 for that advertiser?

6 A No, it doesn't mean they're the same; it means they may  
7 have similar value. But I think -- again, depending on the  
8 objective of the advertiser as well as the kind of user that  
9 they're seeking to be with, there's certain content that  
10 will be more effective.

11 Q And this kind of strategic consideration of various  
12 channels, is that something that you implement at the  
13 channel planning stage or later on? Can you explain a  
14 little bit about how those considerations would come into a  
15 media plan.

16 A Yeah. Channel tends to come toward the end once we  
17 define audience. We try to consider the message, the  
18 moment, and the mindset of the user, and then the channel  
19 that best accomplishes -- or best fits those foundational  
20 elements.

21 Q And so once you've decided what -- between you and a  
22 client -- once you've decided what channels would be good  
23 for a particular campaign, do you still believe at that  
24 point that all media is just media?

25 A Can I be illustrative?

Redirect Examination - J. Friedman

1 Q Sure.

2 A Okay. I think if two channels are going to yield the  
3 exact same outcome, numerator-over-denominator outcome,  
4 different media, for example, social media, may be something  
5 that someone -- you know, depending on the data, but  
6 primarily is browsed on the phone, potentially along with  
7 consumption of another medium, for instance, TV.

8 Whereas TV at the right time could be more of a  
9 lean back; social could be lean forward. So it's very much  
10 moment-oriented. So even if the performance is equal,  
11 marketers unemotionally still may have reasonable reason to  
12 want their ad in one channel over another.

13 Does that help?

14 Q Yeah.

15 A Or is that accurate?

16 Q Could you tell us whether the substitutability of a  
17 given set of media channels for a particular purpose, is  
18 that specific to campaigns? more general? specific to  
19 brands?

20 If you could elaborate a little bit, I think that  
21 would be helpful.

22 A Yeah, I think depending on the advertiser's goals,  
23 advertisers that are extremely performance-oriented,  
24 performance in this respect typically tends to mean as long  
25 as we're talking about a funnel, lower funnel, and very

Redirect Examination - J. Friedman

1 e-commerce- or sales-oriented.

2 I think channels can become more substitutable,  
3 although not necessarily fully substitutable; whereas, when  
4 there are strategic reasons to use a channel, the  
5 substitutability is lessened.

6 Q And once you've decided to use a particular media  
7 channel, like display advertising, for example, are the  
8 tools that you use to purchase that media interchangeable?

9 A I think they each have -- I mean, that's like saying is  
10 Schwab and E\*TRADE interchangeable? I mean, I guess to  
11 accomplish the goal potentially, but there are certain  
12 features that much more strongly benefit certain users.

13 Q And if display is important to a campaign, can Goodway  
14 use social media buying tools to purchase those display  
15 advertisements?

16 A No.

17 Q And if social media is particularly important to a  
18 campaign, can Goodway use programmatic display buying tools  
19 to purchase their social media advertisements?

20 A Generally, no.

21 Q If you could -- you were asked about a specific  
22 article. Turn to Tab 7. Now, this is an excerpt from your  
23 book, I believe.

24 And am I right this was in 2016, you said?

25 A That's what I've been told.

Redirect Examination - J. Friedman

1 Q When you advise that marketers should look at -- go  
2 after users and not websites, can you explain a bit more  
3 about what you mean by that.

4 A Yeah. I think, at the time, the ability to target and  
5 to essentially pluck individual users was probably at its  
6 peak right around then. The amount of available data, the  
7 lack of legislation around data, and -- all contributed  
8 toward, I think, the value of a user being greater than the  
9 site that it was on. And that was a trending belief.

10 Q Is that still your belief?

11 A My belief is still that getting a message in front of  
12 the right user is the single most important fact -- well,  
13 equal to creative, equal to the message, but that's the  
14 heart and brain component.

15 Q And does that mean that all media is essentially the  
16 same if its purpose is to get a message to the user?

17 A Well, no, because message being an equal component can  
18 only be delivered in certain ways on certain platforms or  
19 certain channels.

20 Q Can you give an example of an advertiser that might  
21 value display advertising more than, for example, CTV  
22 advertising?

23 A So I don't know if -- the premise of that. I think it  
24 depends on the objective and depends on the channel mix  
25 being targeted. So yeah, that one is a hard one to isolate.

Redirect Examination - J. Friedman

1 Q During Google's cross-examination, they put up a  
2 demonstrative exhibit showing the marketing funnel. Do you  
3 recall that?

4 A I do.

5 Q And there was a red box toward the top of the marketing  
6 funnel and put a number of things in that box. Do you  
7 recall?

8 A Yes.

9 Q Do you agree that all of the things that were listed in  
10 that red box are top-of-funnel strategies or channels?

11 A I think this was a very oversimplified way of doing it.  
12 And based on my ability to mostly say yes or no, I didn't  
13 argue with it.

14 Q Given the opportunity now to explain, can you tell us a  
15 little bit more about why that's oversimplified and how that  
16 affects your business and how you look at marketing?

17 A Yeah. I think, if I recall correctly, there was online  
18 video and display or open web display or something like that  
19 all, and it was listed upper funnel. And it was made to  
20 look exclusively upper funnel, and that's just not the case.

21 Most channels can be used across different parts  
22 of the funnel, just in different ways. So there's a little  
23 more -- each channel can have different uses, depending.

24 Q And what does that depend on?

25 A Depending on the performance goals. So I'll give you

Redirect Examination - J. Friedman

1 an example.

2 If Heinz Ketchup wants to maintain or increase  
3 awareness, that red bottle is so recognizable that it could  
4 probably do so with a display ad. Put the red bottle.  
5 Consumer says, "Oh, I've seen that Heinz bottle a thousand  
6 times; I remember Heinz Ketchup now."

7 If someone was launching a new brand of vodka, I  
8 would not recommend a display ad to create or increase  
9 awareness because vodka is a cluttered category with a lot  
10 of what I would call sea of sameness, and it's -- consumer  
11 choice in that case is more fickle.

12 And I think that in order to establish relevancy  
13 for the brand to the consumer, that is where, for instance,  
14 sight and sound can be very valuable. Sight, sound, and  
15 motion can be very valuable by using CTV or some sort of  
16 video.

17 Q So do the spaces that a channel occupies in the  
18 marketing funnel depend to some degree on the purpose of a  
19 campaign?

20 A Very much so.

21 Q Do they depend to some degree on the type of  
22 advertiser?

23 A Yeah. The category -- the advertiser's position within  
24 the category.

25 Q Do they depend on audience or target market?

## Redirect Examination - J. Friedman

1 A Certainly. Yes, that play a role. I think, as the  
2 other attorney pointed out, Facebook has a broad audience.  
3 And so while they may help -- well, they say they help find  
4 the right users -- and maybe they do -- there are other  
5 channels where we're able to select those user bases more  
6 carefully ourselves.

7 Q To your awareness, are there audiences that are less  
8 available on social media platforms than others?

9 A I would posit that, yes, I'm sure -- I don't know  
10 exactly what they would be, but I can imagine there are  
11 certain professions or -- for example, it could be highly  
12 rural or, you know, somewhere that lacks -- there's places I  
13 drive sometimes there's no cell signal. I figure if there's  
14 no cell signal, it's really hard to browse social media.

15 Q Can you think of an example where display could be  
16 lower funnel?

17 A Yeah. So in retargeting, which -- do I need to define?

18 Q Yeah. If you could define retargeting. I'm not sure  
19 the Court has heard about that.

20 A So, typically, retargeting will be if -- well, just to  
21 make it highly simplistic. Please, this is not an exact.

22 But we've all gone to a page and seen a product.  
23 And then, two minutes later, we see that product in an ad.  
24 And we go, "Wait. It's following me." That's very, very  
25 simple and illustrative of all retargeting.



Redirect Examination - J. Friedman

1 But, by and large, retargeting is showing an ad to  
2 a user who has already engaged with a brand in some  
3 meaningful way or another. And in that case, again, if it's  
4 a pair of shoes and we're later reminding people to buy a  
5 pair of shoes, that has been proven relatively effective for  
6 a lower funnel.

7 Q Okay. So when those shoes follow me from website to  
8 website, that is an example of display being used in the  
9 lower funnel?

10 A Correct. I've forever ruined retargeting, but yes.

11 Q All right. Google's counsel asked you a number of  
12 questions about excerpts from your book or several articles  
13 that were written around 2016.

14 A Yes.

15 Q Do you view the display advertising landscape the same  
16 now as you did in 2016?

17 A No. And I even have probably -- if asked specific  
18 questions -- I don't know what they would be, but I probably  
19 have revised beliefs of that time as well having learned  
20 since then.

21 Q Specifically, you were asked about advanced TV. Do you  
22 recall that?

23 A I do.

24 Q What is advanced TV?

25 A Well, there was a time where a connected TV -- an

Redirect Examination - J. Friedman

1 advanced TV and settop box -- as the space was emerging,  
2 there were different ways of defining the space. I think  
3 we've settled on connected TV, but advanced TV at the time  
4 might have included video on demand through a cable or  
5 satellite provider. I don't recall specifically.

6 Q And do you still agree that CTV is usually an upper  
7 funnel channel?

8 A Usually, yes. But like any TV, if you turn it on at  
9 the right time and you see infomercials, those are very  
10 specifically lower funnel.

11 Q And for connected TV, does the purpose of the channel  
12 and its effectiveness also depend on the things you talked  
13 about earlier, audience and a purpose of the campaign?

14 A Yes.

15 Q Another excerpt from your book that counsel asked you  
16 about was the -- that in previous editions of your book  
17 you'd outlined targeting approaches channel by channel.

18 Do you recall that?

19 A I remember them saying that, yes.

20 Q What do you mean by targeting approaches? If you can  
21 recall what you meant or if you know -- if you want to say  
22 what you mean now.

23 A Yeah. I think, within social media, there are going to  
24 be different ad formats, different audience composition  
25 within display and within CTV. So there are going to be --

Redirect Examination - J. Friedman

1 there's different ways to use it, as I just stated around  
2 different categories and brands and objectives.

3 And so I think -- well, I think I've answered your  
4 question. I don't want to keep going.

5 THE COURT: This is taking a little long. Let's  
6 move this along.

7 MS. CLEMONS: Okay.

8 BY MS. CLEMONS

9 Q When you then said that you did not -- that outlining a  
10 channel-by-channel approach would be outdated, were you  
11 trying to say anything about whether the channels are  
12 combined or should otherwise be looked at together?

13 THE COURT: Sustained.

14 BY MS. CLEMONS

15 Q Could you explain the channel-by-channel approach to  
16 explain in your book would be outdated.

17 A I think there's a significant difference between a book  
18 that we write and self-publish for marketing purposes and  
19 "whole truth and nothing but the truth" testimony.

20 And so that's not to say that there was  
21 overmagnification, but there's certainly reason to say  
22 things for effect and then to follow up with more detail  
23 later in marketing publications.

24 And so I think that what would have been accurate  
25 at the time was not necessarily that channel by channel was

Redirect Examination - J. Friedman

1 completely and utterly useless; it's that things had changed  
2 such that that was not what marketers should focus on first.  
3 And so there was an attempt to change mindset as much or  
4 more than to get literal.

5 If my books looked like your legal briefs, nobody  
6 would read them.

7 Q I will try not to take that personally.

8 A No, not your -- that was a royal "you." That was  
9 everybody here. That was not you personally.

10 THE COURT: You realize that's going to be on the  
11 front page, you know, tomorrow.

12 THE WITNESS: I'm known to say things occasionally  
13 that -- I don't know --

14 MS. CLEMONS: This may not be the right audience  
15 for that.

16 BY MS. CLEMONS

17 Q So has anything else changed between 2016 and now that  
18 influences how you look at different marketing channels in  
19 the digital media space?

20 A Well, yeah. I think in 2016, I don't think most of  
21 those charges were available programmatically. And,  
22 frankly, I don't think a lot of CTV advertising was  
23 available, period. I mean, Netflix just launched ads in the  
24 last two years or whatever it may be.

25 So -- but I think for -- well, yeah, I think

## Redirect Examination - J. Friedman

1 social media, for instance, has evolved dramatically. It's  
2 my understanding that, when you go into Meta's platform, you  
3 can -- I think you can specify, but it's expected that you  
4 might run across Instagram and Facebook, and they might try  
5 to balance a budget for you.

6 And then within the display -- so I covered CTV,  
7 social.

8 Within the display space, I think the biggest  
9 changes happened -- I think it was 2016, '17, '18, which  
10 was, as opposing counsel mentioned, EBDA or -- I don't  
11 remember what it was called. But open bidding, where header  
12 bidding really increased competition in the exchange space  
13 and, as a result, helped publishers make more money. For  
14 some advertisers, it cost more; some it cost less. Then  
15 that all ended up as a first-price auction.

16 I've got to say, probably in display the last  
17 eight years, moving from second price to first price was the  
18 biggest -- I would say it was the biggest change.

19 Q Why?

20 A When we initially looked over that time period, we  
21 started to see 15 to 20 percent increases in price because  
22 the strategy, when it was second price, was -- could be  
23 defined as bid your maximum. So if you want to bid \$10 for  
24 something but you're pretty confident the second-highest  
25 bidder will be \$3, then you're going to pay \$3.01. And all

Redirect Examination - J. Friedman

1 of a sudden, it's a first-price auction. And now, if you  
2 bid \$10, you're going to pay \$10.

3 And so we mobilized very quickly during that time  
4 to manually reduce bids, which I don't think is good for  
5 publishers. But, again, I'm on the buy side. We protect  
6 our clients.

7 And, eventually, we built into an algorithm a way  
8 to adjust bids to that first-price environment. But that  
9 time -- other than, I think, when DSPs were created in the  
10 early '10s or the late '00s, I think other than that, that  
11 was pretty significant.

12 Q A little bit of a follow-up on header bidding.

13 Did you view header bidding as good, bad, or  
14 indifferent for advertisers, for your clients at least?

15 A So the benefit to advertisers was the ability to --  
16 assuming a fair auction and landscape, to bid into and buy  
17 any slot on the page as opposed to slots that were  
18 previously just reserved for overflow or remnant inventory.  
19 So that part of theory was good.

20 Q Counsel asked you a number of questions about all of  
21 the various channels that you can purchase programmatically.

22 Do you recall that?

23 A I do.

24 Q Does the ability to purchase a number of different  
25 types of media programmatically, has that caused you to look

Redirect Examination - J. Friedman

1 at those as one programmatic media channel?

2 A No.

3 Q Why not?

4 A No. I mean, again, when I log into Schwab, there are  
5 mutual funds and ETFs and stocks and -- there's eight  
6 different categories. I don't view them as interchangeable,  
7 but they are available through one platform.

8 Q Counsel also asked you about the similarities between  
9 ad networks and SSPs.

10 Do you recall that?

11 A Yes.

12 Q Do you consider PubMatic to be the same as an ad  
13 network?

14 A I don't.

15 Q Why not?

16 A Because there's much more -- really, through the DSP in  
17 general but even dealing directly with PubMatic, I guess.  
18 There's the ability to opt in and out of many more variables  
19 than is traditional in an ad network.

20 Q And when you are negotiating with ad exchanges or SSPs  
21 on behalf of Goodway's customers to get lower take rates,  
22 are you able to leverage negotiations with ad networks  
23 against those SSPs?

24 A No. Ad networks typically don't have disclosed --  
25 typically don't have disclosed take rates.

Redirect Examination - J. Friedman

1 Q And you talked about with -- The Trade Desk counsel  
2 asked you if all of the channels that The Trade Desk deals  
3 in are part of the open internet.

4 Do you recall that?

5 A I do.

6 Q Why -- what did you mean or what did you mean when you  
7 agreed that they were all part of the open internet?

8 A I think, by and large, most of the -- most of the  
9 publishers, properties, channels, whatever you want to call  
10 it, within those channels are available to be bought in  
11 multiple places.

12 Q And does that mean that the channels are essentially  
13 interchangeable because they are all part of the open  
14 internet?

15 A No.

16 MS. GOODMAN: Leading.

17 THE COURT: Sustained.

18 BY MS. CLEMONS

19 Q Can you explain whether and how those all being part of  
20 open internet has an impact on how you look at channels?

21 A I don't -- I don't think it does. Channels are one  
22 thing, being part of the open internet is another, and I  
23 guess one could be true and not the other and vice versa.

24 Q There were some questions on cross about the size of  
25 Goodway's customers. And without getting into any



Redirect Examination - J. Friedman

1 competitively sensitive details, can you describe some  
2 characteristics of the kinds of advertiser customers that  
3 Goodway has?

4 A Yeah. Everything from large enterprise global clients  
5 down to individual tractor dealers.

6 Q Would you characterize any of your customers as, like,  
7 mom-and-pop small businesses?

8 A Mom and pop? No. What I will say is, for the tractor  
9 dealer, for example, on their own, I don't think they would  
10 have any route to use a DSP. But because we run a hundred  
11 of them, we're able to aggregate and create efficiencies  
12 that allow all 100 at a time to run on a DSP. But each in  
13 and of itself, my guess would be way too small.

14 Q Do all of your customers have the resources to hire an  
15 ad agency?

16 A I mean, outside of the ad agencies that hire us  
17 themselves, yeah, I -- I think they do broadly. Again,  
18 there are some individual dealerships, whether it's  
19 automotive or farm equipment, that may not.

20 Q You were asked some questions about variable price  
21 floors, and you mentioned you didn't like any attempts by  
22 SSPs to game the system.

23 Can you explain what you meant by that?

24 A Yeah. It's like when the opposing tennis player  
25 develops a new kind of serve. It is like, darn it. That's

Redirect Examination - J. Friedman

1 a good one. It doesn't mean I like it.

2 And so I guess game the system, yeah, I mean, they  
3 were putting different prices on different ad exchanges or,  
4 you know, assigning different prices. And it just made more  
5 work for us temporarily to figure out where to buy the --  
6 what the cheapest route would be.

7 Q And setting aside the additional work to figure out  
8 which was the cheapest route, would it be good or bad for  
9 Goodway's customers if the lowest price floor was on a less  
10 expensive exchange?

11 MS. GOODMAN: Leading.

12 THE COURT: Sustained.

13 THE WITNESS: I didn't hear. I'm sorry.

14 THE COURT: Rephrase the question.

15 BY MS. CLEMONS

16 Q Are there circumstances under which it might be  
17 beneficial for your customers to have lower price floors?

18 MS. GOODMAN: Leading.

19 THE COURT: Look, that's almost obvious, isn't it?  
20 Let's move on.

21 MS. CLEMONS: May I ask one more question, Your  
22 Honor, about that?

23 THE COURT: No. Let's move on.

24 MS. CLEMONS: All right.

25 BY MS. CLEMONS

Redirect Examination - J. Friedman

1 Q You mentioned, when we were talking about the article  
2 behind Tab 35, "Healthy competition among most top exchanges  
3 is what you thought would come from increased supply path  
4 optimization."

5 Do you recall that?

6 A I do.

7 Q What did you mean by "most top exchanges"?

8 A Yeah. That's the nuance that I didn't get into is I  
9 meant everybody but AdX at the time.

10 THE COURT: You need to speak up.

11 THE WITNESS: Oh, I'm sorry. I meant everybody  
12 other than AdX. So when I said most top exchanges, I meant  
13 the other leading exchanges in the market. I didn't  
14 anticipate that AdX would change its pricing strategies.

15 BY MS. CLEMONS

16 Q Why is that?

17 A Because previously, when we had asked to speak to them  
18 about, A, transparency, and B, negotiated rates, we were  
19 told that was not an option.

20 Q And when you said that competition is fierce in digital  
21 advertising, can you explain a little bit more about what  
22 parts of digital advertising you feel are competitive?

23 A Sure. I think competition among publishers. I mean,  
24 you know, with the internet, local news is not only local  
25 news anymore. I mean, I think *The Washington Post* probably

Redirect Examination - J. Friedman

1 has quite broad coverage, as does *New York Times*, etc. So I  
2 think competition among publishers, among mobile apps is  
3 very competitive. And I think in certain parts of the  
4 industry, there are, I think among -- again, among all of  
5 the exchanges other than AdX, it can be pretty competitive.

6 And then -- yeah, I think with connected TV or  
7 video today, that can be fairly competitive. I mean, even  
8 YouTube has to compete with Netflix and others.

9 Q I just have one last question for you.

10 You had mentioned that EDA alone didn't prevent  
11 innovation in the marketplace. Could you explain whether  
12 EDA in combination with anything else --

13 A Well, if I recall, there was a charge for outside  
14 exchanges to use EDA. There was a surplus, which really  
15 just didn't make sense to me at the time because they were  
16 all available without a charge before. And the charge, I  
17 believe, was 5 or 10 percent. I'm sure Google knows more  
18 precisely. But it seemed like a significant premium to  
19 access what prior was the same inventory and too much of  
20 premium for the downsides of header bidding.

21 MS. CLEMONS: Thank you very much. No further  
22 questions.

23 THE COURT: Any recross?

24 MS. GOODMAN: No, Your Honor.

25 THE COURT: All right. Does anyone anticipate

Redirect Examination - J. Friedman

1 calling this witness again?

2 MS. CLEMONS: We'd like to keep it open for  
3 rebuttal, Your Honor.

4 THE COURT: All right. Mr. Friedman, then, I  
5 can't let you stay in the court to watch the proceedings.  
6 You'll have to say in contact so that they know what --  
7 you'll know if you have to come back. All right?

8 THE WITNESS: Okay. Someone will explain to me  
9 exactly what that means.

10 THE COURT: It means -- the rest of this week,  
11 you're not going to get on recall this week.

12 THE WITNESS: Ah, got it.

13 THE COURT: You can go home. After that, I don't  
14 know how the schedule will go. But you're not permitted to  
15 discuss your testimony with any witness who has not yet  
16 testified. Thank you.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. We're going to go to  
19 deposition designations.

20 Now, I actually see from a list of witnesses  
21 "deposition designations." So do we have more than one  
22 witness? What are we doing now?

23 MS. WOOD: Yes, Your Honor. We have one read-in  
24 for Mr. Creput, and then there would be a second read-in --  
25 it's actually quite short -- from Mr. Lipkovitz, and then

Redirect Examination - J. Friedman

1 there would be a video of Mr. Lipkovitz.

2 THE COURT: All right. Are there any issues about  
3 these depositions? The designations have been agreed to?

4 MS. RHEE: All but really a handful of  
5 designations, and we have the agreement with respect to  
6 those, Your Honor.

7 THE COURT: But, I mean, the two that have just  
8 been mentioned, are there any issues as to the two?

9 MS. RHEE: Yes. For the two, I think for the  
10 second one --

11 Your Honor, with respect to the second of the two  
12 designations, Google has no objections. For the first one,  
13 there are only a handful of objections. And what we would  
14 propose to do is just at the time that the question is  
15 posed, you can see what the answer is and we can lodge our  
16 objection.

17 THE COURT: Fine. All right. So I need copies of  
18 whatever it is that's going to be read, one for my clerk,  
19 who's going to read the witness's answers.

20 MS. WOOD: May I have one moment to confer?

21 THE COURT: Yes.

22 MS. WOOD: So, Your Honor, just as a logistical  
23 matter, we have -- what we've done is printed the full  
24 deposition in a binder, but obviously only portions are  
25 going to be read. We can indicate the portions that will be

Redirect Examination - J. Friedman

1 read or we, alternatively, have just the edited portion to  
2 give you. But I believe we may have a mistake in one area.

3 THE COURT: All right. The main thing -- let's  
4 get them out. I don't care which version you do. If it's  
5 the whole thing, just say page 17, line 14. That will get  
6 my clerk right to it.

7 MS. WOOD: Understood.

8 THE COURT: Okay. I assume the sections are  
9 highlighted somehow. Are they yellow? green? pink? blue?  
10 What?

11 MR. TEITELBAUM: I'll confirm that now, Your  
12 Honor.

13 MS. WOOD: Your Honor, actually, I believe the  
14 full transcript copy is downstairs. So we just need to  
15 bring that up. I apologize for that. We can start with a  
16 different version, or we can take an afternoon break.

17 THE COURT: I want to keep this moving until 4:00.  
18 So whatever we've got, let's do it.

19 MS. WOOD: Okay. I apologize for that, Your  
20 Honor.

21 (Binders are submitted.)

22 THE COURT: Since I don't have any highlighting in  
23 this, I'm assuming --

24 MR. TEITELBAUM: We are attempting to sort that  
25 out right now, Your Honor. I'm sorry for the delay.

Direct Examination - E. Lipkovitz

1 THE COURT: Most important -- we just need one  
2 copy that's highlighted for the reader. I can jump around,  
3 but he can't.

4 MR. TEITELBAUM: Understood, Your Honor.

5 MS. WOOD: We'll just use these paper clipped. I  
6 apologize. We'll put them in binders for you properly.

7 THE COURT: For the record, this is excerpts of  
8 the deposition of Eisar Lipkovitz. He was under oath when  
9 he gave his testimony. So let's go.

10 DIRECT EXAMINATION

11 BY MS. WOOD

12 Q Could you provide your full name for the record?

13 A Sure. It is Eisar Lipkovitz.

14 Q Okay. I'd like to discuss your time being employed at  
15 Google. When did you join Google?

16 A August 2, 2004.

17 Q You remember it pretty clearly. Is that a -- does that  
18 date stick out in your mind?

19 A I have an affliction of having an extremely good  
20 memory. I'm not bragging, but, you know, it's actually  
21 different for me to -- not to remember stuff, you know;  
22 so...

23 Q Yeah. I appreciate that.

24 So what were your -- what was your initial job  
25 when you joined Google?



Direct Examination - E. Lipkovitz

1 A I have joined what was later called search  
2 infrastructure team. I was working on the search engine,  
3 and I was managing a team initially that was in charge of  
4 what was called Google Web Server, and pretty quickly  
5 thereafter, it expanded to sort of managing the crawling and  
6 indexing team. And, you know, over time it became sort of a  
7 larger scope, all of it.

8 And so the infrastructure is what makes search  
9 possible.

10 Q So, Mr. Lipkovitz, are you an engineer? Correct?

11 A I am by trade.

12 Q And what does that -- I mean, so what does that mean  
13 that -- your day-to-day responsibilities, what are the -- I  
14 should ask, what are the general responsibilities of an  
15 engineer at Google? What types of projects might you work  
16 on?

17 A You know, it's just all over the place, and all of it  
18 changed over time. And in my case, because I start at a  
19 manager, it's a little bit different. But in general, it's  
20 writing code, reviewing code, maintaining systems, writing  
21 design --

22 THE LAW CLERK: I have a duplicate. I have a  
23 bunch of --

24 MS. WOOD: You have page 3 of 26?

25 THE LAW CLERK: I have -- oh, here we are. Sorry.

Direct Examination - E. Lipkovitz

1 A So as I said, writing, design, documents, participating  
2 in meetings and so forth.

3 Q Are engineers at Google involved in strategic  
4 decisions?

5 A It changed over time. When I joined, quite a bit, yes.

6 Q When you talk about programmatic, what do you mean by  
7 "programmatic"?

8 A You know, it's a buzz word that I don't know, you know,  
9 who made it up. And it was a pretty important one,  
10 especially when I joined.

11 The industry was moving away -- or "away" is not  
12 the right word. Prior to programmatic, the vast majority of  
13 ads, you know, being sold online, at least by dollars, I  
14 should say, were direct sold. An advertiser and a publisher  
15 would have a relationship, and they would agree, you know,  
16 to a contract and buy units, roughly how TV advertising is  
17 sold today.

18 And programmatic was an attempt to sort of get it  
19 more efficient and sort of automated and, you know, use  
20 technology to minimize the number of people needed to talk  
21 and salespeople and martinis and, you know, all that stuff.  
22 That's probably the highest level.

23 MS. WOOD: This is later.

24 BY MS. WOOD

25 Q Okay. That makes sense. So after 2016, summer 2016,

Direct Examination - E. Lipkovitz

1 you were the lead engineer for the display and video team  
2 for Google?

3 A That is correct.

4 Q You had responsibility for all Google's display  
5 business on the engineering side; is that correct?

6 A It is correct.

7 Q How many people were in the display and video  
8 organization all together?

9 A It changed over time, but I would like to say somewhere  
10 between 2,500 to 3,500-ish.

11 Q Okay. And were you sitting on the top of that org  
12 chart?

13 A As I mentioned, we had, you know, multiple partners,  
14 depending on the time. I was probably -- by head count, I  
15 had the majority of them because engineers is the bulk of  
16 that organization from head count.

17 Q What is a publisher, as you understand it?

18 A I mean, you know, it starts with a generic definition  
19 of publisher, which was a commonplace in media. But in the  
20 context of ads, it is an entity that is trying to monetize,  
21 make money for media by placing ads next to their content.  
22 And they use technology or, you know, some sort of online  
23 ability to do that, to do so.

24 Q Okay. And what types of technology might a publisher  
25 use?

Direct Examination - E. Lipkovitz

1 A You kind of have to start with an ad server, which is  
2 effectively a piece of software that lets you manage the  
3 inventory of slots on, you know, your webpage. So that's  
4 probably the most important aspect.

5 Q Do publishers use an ad server for both direct and  
6 remnant sales?

7 A Yes, they do.

8 Q Okay. Are you familiar with the terms "buy side" and  
9 "sell side"?

10 A Yes. So, traditionally speaking, buy side is referring  
11 to the advertiser-facing products and sell side to the  
12 publisher-selling product -- facing products.

13 Q Did Google have ad tech tools which it offered to the  
14 sell side?

15 A Yes.

16 Q And did you have ad tech tools which you offered to the  
17 buy side?

18 A Yes, we did.

19 Q Okay. Did you -- I guess after summer 2016, did you  
20 have responsibility for Google's products on both the buy  
21 and sell sides?

22 A I did.

23 Q If I'm a small advertiser spending \$1,000 a month with  
24 DVM --

25 MS. WOOD: And, Your Honor, I'll just represent to

Direct Examination - E. Lipkovitz

1 the Court, that is DV360 --

2 BY MS. WOOD

3 Q -- would DVM be an option for me?

4 A "Option" meaning what? Like where is the decision?

5 Q Would it make sense for me to work on DVM?

6 A I would not advise it.

7 Q Why not?

8 A Because, like, all the benefits exist on DVM would be  
9 extremely useless for you.

10 Q How so?

11 A You know, if we have to charge you for support, you'll  
12 spend more money on that than whatever you spend on media.

13 Q Does the ad server business have substantial fixed  
14 cost?

15 A Yeah. I think it is -- you know, the biggest one is  
16 probably the technology R&D team, right, and payroll for  
17 that. You know, you may need some sales and support to  
18 support the customers, and then you have some infrastructure  
19 costs, you know, to have the actual ad server. Right? It's  
20 usually software as a service, you know.

21 The ad tech company hosted everything and had the  
22 production assistants. They have to have ops people.  
23 Sometimes they have data centers, whatever.

24 THE LAW CLERK: Do I continue?

25 MS. WOOD: Go ahead.

## Direct Examination - E. Lipkovitz

1 A Okay. That's a good question. It was a debate, right?  
2 I think there were sort of multiple reasons. Right? One  
3 is, you know, we had a team. Right? And you get into this  
4 dynamic that I see everywhere that Google probably works  
5 where, you know, it's hard to cancel a thing and the team  
6 would advocate for it. Right? And you know, some type of  
7 job security.

8 And to be clear, these people would not lose their  
9 job, you know. It's hard to lose your job at Google. It's  
10 just literally their vested interest, right, one.

11 Two, a lot of the customers of DFP were large  
12 publishers. Many of them are large media companies. Right?  
13 So you know, Google did not want the anger pissing them off.

14 And I think, three, you know, it is providing  
15 value. And, you know, we tried so sort of contain the cost.  
16 I don't think we are making any profit of that. Right? But  
17 it's some sort of a public service, you know, to continue  
18 kind of boosting the ecosystem. It's just hard, you know,  
19 when you're a large company, to stop doing something.

20 Q Was there value specifically to Google in running the  
21 ad server?

22 A Yeah. So the team -- there were people, you know, when  
23 I was referring back to the first argument. Right? The  
24 team wasn't just, you know -- when we are doing job security  
25 or self-preservation, right, they would argue that's a

Direct Examination - E. Lipkovitz

1 strategic value of having access to inventory.

2 Q What do you mean by "access to inventory"?

3 A So, you know, I think our goal was to give  
4 advertisers -- you know, we had multiple constituents,  
5 right, at a super high level, right, advertisers, users, and  
6 publishers.

7 My point of view was always that advertisers sort  
8 of have the highest allegiance because they're actually  
9 paying. And what advertisers want is they want to have  
10 access to users, right? And we wanted to give them the best  
11 product, which means, you know, it's easy to use and it  
12 gives the best performance. But, you know, you still need  
13 to have access to as many users as possible. So in that  
14 regard, yes, DFP was helpful.

15 Q How was it helpful in providing access to users?

16 A Yeah. So I think there is two ways to think about  
17 access to users or impressions, right?

18 One is having a relationship, right, with every  
19 publisher to the extent it is possible and having an  
20 opportunity to compete on every impression of that  
21 particular publisher. And, you know, first one is easy,  
22 right?

23 So you want to have a relationship whether you are  
24 returning a network or you're running an SSP with all  
25 publishers, right? So you don't want to anger them. You

Direct Examination - E. Lipkovitz

1 want to offer them a product that they will be happy with.

2 And secondly is having some influence over the  
3 decisioning, right? So at the end of the day, the ad  
4 server -- because at the end of the day, somebody has to  
5 show the ad, right? And the ad server is making the final  
6 decision, right?

7 And our goal is to compete at every potential  
8 auction that exists, which we felt is good in two ways.

9 One is, you know, give our advertisers access.  
10 And two, by definition, increases the publisher revenue,  
11 right, because every impression you won -- if you didn't  
12 win, right, the publisher would make less money.

13 Q Are you familiar with last look?

14 A I heard this expression being used, yes.

15 Q What do you understand last look to refer to?

16 A I think what people were referring to is some  
17 opportunity, kind of at the end after everybody else bid on  
18 the impression, to try to beat the -- you know, the best  
19 price or whatever.

20 Q While you were in -- from 2014 to 2018, did Google  
21 offer AdX last look in DFP?

22 A I think that -- I think it's a publisher-friendly  
23 feature, right, because if you give anybody, no matter who  
24 it is, an opportunity to match whatever price, like any  
25 auction, right, at the end of the day, the seller will make



Direct Examination - E. Lipkovitz

1 more money, right?

2 Because I just think it's more problematic from an  
3 advertiser standpoint, depending on how it's being done, and  
4 it gets complicated who is actually benefiting from this.  
5 When user with preferential treatment, you know, it is a  
6 very complex topic.

7 So I really, A, first don't remember all the  
8 details. B, I think it's very hard to say exactly whether  
9 it's good or bad, right? It just felt somewhat asymmetric.  
10 I wasn't excited about it.

11 Q And did DFP offer any other SSPs --

12 MS. WOOD: SSPs being another term for exchanges,  
13 Your Honor.

14 BY MS. WOOD

15 Q -- did DFP offer any other SSPs last look?

16 A I do not know.

17 Q When you first joined Google's display team in 2014, am  
18 I right that GDN --

19 MS. WOOD: Which we're calling at this trial, Your  
20 Honor, Google Ads.

21 BY MS. WOOD

22 Q -- am I right that GDN, or Google Ads, was not  
23 permitted to buy inventory offered by third-party SSPs?

24 MS. WOOD: I'm adding "or exchanges." That's what  
25 we're referring them to in this trial.

Direct Examination - E. Lipkovitz

1 THE WITNESS: That is correct.

2 BY MS. WOOD

3 Q So GDN, meaning Google Ads, was not permitted to buy  
4 inventory from programmatic, correct?

5 A I'm not a fan of the words "permitted" because it did  
6 become a debate while I was there. But it did not, yes.

7 Q Okay. Why?

8 A Well, you know, there is some -- they are somewhat, I  
9 consider, religion, which, you know, maybe was justified by  
10 supposedly business reasons. And there was some actual  
11 arguments that were, you know, fairly objective, right, but  
12 just harder to quantify.

13 Like, let me start with the second one. GDN was  
14 especially, you know, a fairly simple product for, you know,  
15 advertisers that don't need a lot of control. I understand  
16 that you mentioned earlier smaller, but it's difficult  
17 because it's -- some -- a large advertiser don't need  
18 control.

19 However, there were concerns that if those  
20 advertisers placed ads on third-party SSPs, they may end up  
21 being shown into, you know, like, in context, those are the  
22 types that we don't want. And then spam.

23 So let me explain these two issues, right? So,  
24 you know, if you're Coca-Cola, you know, you might not want  
25 to be a place where your ads are showing on some porn site

## Direct Examination - E. Lipkovitz

1 or whatever or -- you know, or some websites that have some  
2 political point of view you don't agree with, you know. All  
3 these things become a real issue.

4           You know, a few years back, right -- oh, yeah.  
5 And there were people on the GDN team who felt this is an  
6 incredible, important thing. And the only way to ensure,  
7 because we know who the publisher is, is to make sure  
8 through our -- you know, the Google network, including AdX,  
9 where we have a direct relationship with these publishers,  
10 right? So we know who they are. We can authenticate which  
11 pages they are, what they look like, and stuff like that.

12           Spam is another issue. It's, again, an  
13 advertiser-friendly position that -- you know, by spam, I  
14 mean it's a case where the impression actually was not shown  
15 to anybody like a real person, right? So there's some types  
16 of middleman that would manufacture impressions, right, to  
17 collect revenue and essentially to advertisers of money,  
18 right?

19           And AdX and, you know, other Google technologies  
20 had a little bit better SDKs and some special JavaScripts  
21 that will be better at detecting this sort of -- type of  
22 activity, right? That's what the genesis of that.

23           The counterargument was, well, you know, some  
24 advertisers are willing to take risks. Why can't we offer  
25 that? And that was getting into some internal debate. But

Direct Examination - E. Lipkovitz

1 that's sort of, you know, how things evolve.

2 And to be honest, you know, it was the way things  
3 just sort of evolved, right? So at some point, this became  
4 a topic of debate. So it's not that anything was  
5 prohibited, but that's sort of how we got there.

6 Q Were there financial considerations in GDN or Google  
7 Ads bidding on third-party exchanges?

8 A Yes. I think that when Google bids on a third-party  
9 exchange, they would not make sell-side margin.

10 Q What do you mean by "sell-side margin"?

11 A So when the impression was bought through AdX, AdX took  
12 a cut of the payout from the advertisers to the publisher.  
13 It's considered sell-side margin.

14 Q Was there concern that GDN or Google Ads bidding on  
15 third-party exchanges would make third-party exchanges more  
16 attractive partners for publishers?

17 A There are often people that express that concern, yes.

18 Q Who in particular expressed that concern?

19 A Generally speaking, people that were on the sales, you  
20 know, the sort of -- the partnership sales team that worked  
21 with those publishers.

22 Q Would Jonathan Bellack express those concerns?

23 A He did.

24 Q What did -- if you recall, what specific concerns did  
25 Jonathan Bellack raise?

Direct Examination - E. Lipkovitz

1 A You know, what you just said. And, you know, I think  
2 we talked about it earlier, right? Like the exclusivity in  
3 core of GDN or AdWords and in AdX.

4 Q Can you explain that concept -- that last concept about  
5 the exclusivity of GDN or Google Ads and AdX a little bit  
6 more.

7 THE LAW CLERK: Do I start with the "he said"  
8 quote that's before the A?

9 MS. WOOD: Yes.

10 A Okay. He said, quote, he likes and -- you know, and I  
11 think the people and the sort of partnership team were even  
12 stronger in that respective to make the claim that AdX is  
13 the -- in quote, the only place where GDN or AdWords demand  
14 is exposed.

15 Q Why was that important?

16 A Because it's some sort of like, in quote, a winning  
17 argument with the publisher. I didn't agree with that.

18 Q Had GDN or Google Ads bid on third-party exchanges,  
19 would it have increased their auction pressure?

20 A It would, yes. By definition, any additional buyer  
21 would have this impact.

22 Q Would it have increased the clearing price of those  
23 third-party exchanges?

24 A It could.

25 Q What is capital A, capital WBid, one word. What is

Direct Examination - E. Lipkowitz

1 AWBid?

2 A So I think it stands for AdWords bidding. And the idea  
3 was to extend AdWords' ability to buy on other exchanges,  
4 which is a topic we discussed, you know, in the last ten  
5 minutes at length.

6 Q Were there proponents of AWBid within Google?

7 A Yes.

8 Q Who were the proponents of AWBid?

9 A So it's effectively -- I mean, the biggest one was Oren  
10 Zamir, who reported to me at the time. And he was sort of  
11 the head of the remarketing -- you know, we called it  
12 remarketing; here, it's called retargeting -- where he  
13 felt -- and I agree with him -- that that's an area where  
14 the benefit for advertisers is actually quite clear.

15 Q Why was there significant benefits for advertisers?

16 A Yeah. We -- because, you know, fundamentally,  
17 advertisers have a budget, right? And so there is a limit  
18 to how many impressions they are actually going to buy,  
19 right? And most impressions are similar with one exception.

20 For retargeting advertisers, they had all the  
21 data. And, you know, our technology supported it. That  
22 shows that anyplace you can catch a user, right, that is  
23 subject to retargeting increases your chance of a click and  
24 a conversion.

25 So it is a type of advertising where more is

Direct Examination - E. Lipkovitz

1 better, much more than, you know, any other type of  
2 targeting.

3 Q Is -- so are you saying remarketing was a small part of  
4 GDN or Google Ads demand?

5 A If counted by number of impressions, yes.

6 Q Was AWBid limited to remarketing targeting?

7 A Yes.

8 Q Who was --

9 MS. WOOD: And skipping pages.

10 BY MS. WOOD

11 Q Who was using header bidding technology?

12 A That was a mix of -- so publishers were using the  
13 technology, but how they got introduced to that was sort of  
14 all over the place. So sometimes Criteo would come in and,  
15 you know, say I want to put my tag on the page. And the  
16 publishers are like, well, why should we give you exclusive  
17 access? Fine, put the header bidding there.

18 Sometimes -- could be one of the SSPs that you  
19 mentioned or a network. I mean, Criteo is a network that  
20 would come and say, you know, like, why are you giving all  
21 these impressions just for one SSP? Could be Google or  
22 anybody else. We would like to -- right. So they would go  
23 and introduce.

24 At some point, there were some vendors that were,  
25 like, selling header bidding technology, right, because

Direct Examination - E. Lipkovitz

1 there's some configuration you can do with that and whatnot.

2 Q So in some way, was the publisher directly calling the  
3 SSP or exchange via the header bidding code?

4 A Yes. You can say calling usually multiple SSPs, yes.

5 Q Did header bidding allow that call to happen without  
6 DFP being involved?

7 A I believe there was a possibility that can happen, yes.

8 MS. WOOD: And then there's some skipped pages.

9 BY MS. WOOD

10 Q Well, why would publishers adopt the technology if it  
11 was so crappy?

12 A So let's talk about what's crappy about it first, and  
13 then I think it will help you understand the question -- the  
14 answer, right?

15 The worst part of it, in my opinion, was the fact  
16 that it made the page render a lot slower because it had to  
17 execute the sequence. It was very inefficient. It was  
18 complicated. So it slowed down your browser even, right?

19 And because it was a bargain, people, they feel  
20 like -- they make mistakes sometimes. You didn't get any  
21 ads, right? So the user experience was pretty bad. Some  
22 publishers -- and what I mean by that is, like, the page  
23 would reload. It would take a very long time for the page  
24 to render or you would get, like, broken links.

25 Some publishers didn't care about, right, or at



## Direct Examination - E. Lipkovitz

1 least -- let me be more specific. The person who put the  
2 header bidding tag was somebody trying to show their boss  
3 they're making more money, you know. And the person that  
4 was in charge of the content or the CEO of the publisher  
5 didn't even realize what was going on.

6 The second issue was -- that's one dimension. The  
7 second one is around fraud and billing. So this is  
8 something we didn't talk about, but it's an important one.

9 You know, a publisher needs to know how they are  
10 owed because they sold their impression. If you're working  
11 with an exchange or an SSP in general, you know, your ad  
12 server knows who you sold an impression to. And then you  
13 can go work with that party to make sure how much you owe.

14 With header bidding, there was a lot done with the  
15 client. There was no paper trail. So you had to have a lot  
16 of trust. So it's one of those things where you think  
17 you're making more money, but then, when you tried to  
18 collect it, you realize you're not. That was another big  
19 factor.

20 So those two in particular were ones where the  
21 people making decision didn't even have enough visibility.  
22 And all they focus about is the fact that they have  
23 increased the auction pressure by having more buyers.

24 Now, the last point, which is very subtle, has to  
25 do with what is the actual value prop of having another SSP.

## Direct Examination - E. Lipkovitz

1 Some of them had -- were running auctions that were not  
2 clean, either first-class auction or something you don't  
3 even understand. It wouldn't be clear with their margin,  
4 and the net effect was that it was trying to deal with that,  
5 right, whether they're Google advertisers or other DSP  
6 advertisers.

7 Initially, it worked. But then advertisers became  
8 more sophisticated. They started bidding against  
9 themselves. They start realizing what DSP do what things.  
10 And I think the value of header bidding diminished over  
11 time.

12 Q Given that, why did header bidding adoption grow so  
13 rapidly?

14 A I think the concept of having multiple parties compete  
15 in the impression is actually pretty good. And I think  
16 publishers were sort of desperate forever. They'll try it.

17 Q Did it also -- this will be a more complicated  
18 question.

19 A Sure.

20 Q Did it increase the amount of inventory third-party  
21 SSPs, meaning exchanges, were seeing?

22 A It must have, yes.

23 Q Why must it have?

24 A Because anyplace that you put a header bidding tag  
25 prior to that, there was only one SSP getting it. Now, more

Direct Examination - E. Lipkovitz

1 than one. So definitionally add more impression for every  
2 SSP.

3 Q Is there a value in seeing more inventory for SSPs or  
4 exchanges?

5 A There is.

6 Q What is that value?

7 A I mean, firstly, you know, you would have a larger  
8 denominator, right? So you might increase your numerator so  
9 you get more revenue.

10 Second, you can tell your buyers on the exchange  
11 that you have more inventory or you have access to publisher  
12 X, Y, Z.

13 Q So let me just make sure I understand. Was the  
14 argument that publishers -- header bidding made it easier  
15 for publishers to switch to other SSPs or exchanges? Am I  
16 understanding your testimony right?

17 A I think in the long run -- and when you say "switch,"  
18 switch what, right? You need to be more specific. I think  
19 what header bidding did is it exposed them, made it easier  
20 for them to work with multiple SSPs at the same time, which  
21 can then lead to discovering some things that they like more  
22 about a particular product or a more aggressive sales  
23 strategy that will eventually lose because Google caused  
24 Google to lose the entire account.

25 Q It's the SSPs, meaning exchanges, that are competing

Direct Examination - E. Lipkovitz

1 with AdX, correct?

2 A Correct.

3 Q And the header bidding is allowing those SSPs or  
4 exchanges to have more access to inventory, correct?

5 A That is correct, yes.

6 Q It's allowing those SSPs or exchanges to develop direct  
7 relationships with publishers, correct?

8 A Yeah.

9 Q Sorry. I was answering Julie. I'll restate the  
10 question.

11 And header bidding is allowing SSPs or exchanges  
12 to develop direct relationships with publishers, correct?

13 A It lowers the barriers of entry, yes.

14 Q Could header bidding have ultimately allowed non-Google  
15 SSPs or exchanges to see as many impressions as AdX?

16 A Theoretically speaking, yes.

17 Q What is it about access to inventory that increases the  
18 competitiveness of the SSP or exchange?

19 A You know, it's pretty simple, right? Like, you can  
20 compete on different things if you're an SSP. Having the  
21 most impressions is -- you know, is pretty easy for people  
22 to measure even, right?

23 Q But I guess I'm struggling to understand how that  
24 translates into competitiveness. Does it make AdX a better  
25 place to buy?

Direct Examination - E. Lipkowitz

1 A Yes.

2 Q Why does that make AdX a better place to buy?

3 A I mean, at some level because you don't need to buy in  
4 other places, right? Because you get everything you need  
5 there. Let me give you an analogy, right?

6 So Amazon has the Marketplace, right? They send  
7 the products from Amazon. Sometimes they allow other  
8 merchants to put their products on Amazon, right? So you,  
9 as the consumer, at some point, like -- you know, I'm just  
10 going to go to Amazon. Why would I even go to Google or go  
11 into other websites and do comparison shopping? It's not  
12 just worth my time because I know Amazon has everything, or  
13 whatever.

14 Q So I'm just trying to understand SSP or exchange  
15 competition a little bit better being a lawyer, not somebody  
16 that deals with this every day.

17 A No, I get it.

18 Q Earlier we talked about SSPs or exchanges compete on  
19 the amount of demand on the -- the amount of demand buying  
20 on their SSP, correct?

21 So the demand you have on your exchange --

22 A Yeah.

23 Q -- the more -- I'm sorry.

24 So the more demand you have on your exchange --

25 A Yeah.

Direct Examination - E. Lipkovitz

1 Q -- the more competitive your exchange is, is that  
2 correct?

3 A It's more competitive for publishers, but yes.

4 Q Is it -- is your testimony that there's also  
5 competition for access to inventory? Let me start again.

6 Do SSPs compete for access to inventory?

7 A They do.

8 Okay. Let me make maybe a slight suggestion,  
9 right? If we go back to the marketplace -- could be eBay,  
10 Amazon. It doesn't actually matter, right?

11 It's always a two-sided marketplace. There are  
12 buyers and sellers. And you get into this sort of virtual  
13 cycle thing where, if you find a way to make it more  
14 attractive to buyers, now you're competitive towards buyers.  
15 You will then use that to go to tell sellers you should sell  
16 here because I have more buyers.

17 And then you're going to go back to buyers and say  
18 I just got more sellers; you should buy here and shouldn't  
19 buy anywhere else.

20 So you get the dynamic that, you know, more  
21 parties -- doesn't matter if it's buyers and sellers -- have  
22 this virtual cycle that makes the whole thing sort of more  
23 competitive.

24 Q And header bidding here is undermining the network  
25 effects of offering more inventory to advertisers, correct?

Direct Examination - E. Lipkovitz

1 A Let me think about it.

2 Yeah, you can say that. It is essentially back to  
3 commoditization. Yeah, it is reduced to the network effect,  
4 you can say.

5 Q Is it lowering AdX's differentiated value proposition  
6 for advertisers?

7 A Yes, it could.

8 Q Is it increasing other SSPs', meaning exchanges', value  
9 proposition to advertisers?

10 A Yes, it could.

11 Q Is it increasing other networks' value to advertisers?

12 A It could.

13 Q And together it's commoditizing the SSP or exchange  
14 level of the stack, correct?

15 A It does. But it does create a lot of new products.

16 Q Okay. I mean, is it fair to say that the network  
17 effects -- AdX no longer has differentiated network effects  
18 compared to its competitors due to header bidding?

19 A I wouldn't say "any longer." I think it will have --

20 Q I didn't get your answer.

21 A Yeah. Let me repeat myself.

22 I wouldn't say it no longer has a network effect.  
23 I think it weakens it.

24 Q Okay. But it strengthens other SSPs' or exchanges'  
25 network effect?

Direct Examination - E. Lipkovitz

1 A Yes. But you also have the opposite scenario, right,  
2 where somebody was exclusively, you know, sort of speak with  
3 one SSP and, because of header bidding, now AdX has access.

4 Q Does it also put pricing pressure on AdX?

5 A What do you mean by "pricing pressure"? Pricing of  
6 what?

7 Q Did it put pressure on AdX to reduce its revenue share?

8 A We have not lowered the rev shares, to my knowledge.  
9 So I don't know. I mean, I can speculate.

10 Q Was a concern that the commoditization of the SSP or  
11 exchange would lead to a pricing war?

12 A I think we were in some sort of pricing war that we  
13 refused to participate in, right? That probably made it  
14 worse.

15 Q How did you refuse to participate in a pricing war?

16 A You know, you just lose customers instead of lowering  
17 prices.

18 Q Did Google lose shares as a result?

19 A I don't know.

20 Q Why -- first of all, did you understand GDN or Google  
21 Ads to have differentiated demand?

22 A Yes.

23 Q And why was its demand differentiated?

24 A Because primarily -- because primarily, of all the  
25 technology that essentially Bamen and Ali's team build,



Direct Examination - E. Lipkowitz

1 right, to produce ROI you know the advertisers want, right?  
2 And, you know, we don't -- we don't buy *USA Today*. We don't  
3 care, you know, where -- from a GDN lens where you buy the  
4 things.

5 We just look at based on availability of signals  
6 and based on some of technologies, right, and based on some  
7 restrictions we have and where we want to buy and whatnot,  
8 right? So yes, in that regard, it is a differentiated  
9 demand.

10 Q And I know that we keep going over this point, but is  
11 there a group of advertisers that only buys on GDN or Google  
12 Ads and don't buy anywhere else? I mean -- oh, sorry.

13 A And don't buy where else? I mean, that's a very broad  
14 question.

15 Q On the DSPs.

16 A I believe there is a large category of usually small  
17 advertisers don't buy on DSPs. I do believe those,  
18 especially now, would buy on FAN and Amazon. Why wouldn't  
19 they?

20 Q Okay. That's helpful.

21 Is there anyone else those small advertisers could  
22 buy other than FAN and Amazon?

23 A I think some of the networks probably offer  
24 self-service products, you know, like in Amobee or Criteo is  
25 still in business, right? And I don't think, you know --

Direct Examination - E. Lipkovitz

1 wait.

2 And I don't know what, you know, the reason Criteo  
3 doesn't have small advertisers is because of the complexity  
4 of what I told you earlier, but probably have a long-tail  
5 product.

6 MS. WOOD: Thank you very much. I appreciate your  
7 assistance.

8 THE COURT: All right. Now I'll take the  
9 afternoon break until 4:30.

10 MS. WOOD: Thank you.

11 (Brief recess taken.)

12 THE COURT: Ms. Wood.

13 MS. WOOD: All right. Yes, Your Honor. So now  
14 we -- the litigation deposition of Mr. Lipkovitz was  
15 actually videotaped unlike the investigation deposition,  
16 which is why we read that one in. So now we're prepared to  
17 play the video of Mr. Lipkovitz's deposition. I believe the  
18 run time is approximately an hour and 16 minutes.

19 THE COURT: Is it repetitive of what we just had  
20 read in?

21 MS. WOOD: It should not be, no, Your Honor.

22 THE COURT: All right.

23 MS. WOOD: There are two limited instances where I  
24 believe Google wants to maintain an objection. So we'll  
25 just pause the video at that point. You should have in

1 front of you the binder, and we'll note the page and the  
2 line number where the question was asked. I don't believe  
3 there was an objection at the time. I think there's an  
4 objection now.

5 THE COURT: Just so I know, what's the page we're  
6 talking about?

7 MS. RHEE: Actually, Your Honor. To make  
8 everything efficient and not to have to pause, the first one  
9 is on page 127 of the deposition, and it's lines 12 through  
10 14.

11 THE COURT: The question is, "Did you think it was  
12 part of the culture in the group at that time?"

13 MS. RHEE: Correct, and the answer is, "Correct."

14 THE COURT: Well, it's simply his opinion about  
15 the culture at Google. It's one person's opinion. I don't  
16 think that's enough to add much to the case one way or the  
17 other, and it really is not appropriate. So I will strike  
18 lines 12 through 14.

19 MS. WOOD: Your Honor, may I respond?

20 THE COURT: Very quickly.

21 MS. WOOD: I would just, again, underscore that  
22 this is the director of engineering who was the head of  
23 display at the time. So I don't believe it would be  
24 appropriate to characterize it as just one person at Google.  
25 This was the person in charge of the display group and

1 engineering at Google.

2 THE COURT: But you've already said it was  
3 intellectually dishonest in my opinion. You're getting in  
4 with --

5 MS. RHEE: Of course, we're not objecting to that  
6 line. So we understand.

7 THE COURT: Right.

8 MS. RHEE: And then similarly, we have a very  
9 similar objection to page 196, Your Honor, lines 13 through  
10 15.

11 THE COURT: That's all right because I think he --

12 MS. RHEE: Correct, Your Honor. We're not  
13 objecting to that.

14 THE COURT: Well, you have to read above that. So  
15 his answer, "Well, you know, I think it's within our right  
16 to do that, but it's not a solution would propose."

17 Then the question was, "Why is it not a decision  
18 that you would propose a solution you would propose?"

19 And he said, "It's sort of lazy."

20 I mean, that's all right because I think he's --

21 MS. RHEE: Correct, Your Honor. We're not  
22 objecting to that. It's then just the add-on point where it  
23 really just goes to the --

24 MS. WOOD: Are you at 196, line 8, Your Honor?

25 THE COURT: I'm sorry. I was at 195. 196,

1 line 8?

2 MS. WOOD: Yes, Your Honor. It's obviously  
3 responsive to the things discussed on 195.

4 THE COURT: Well, I am letting 195 in.

5 MS. RHEE: Well, we didn't object, Your Honor, to  
6 195.

7 THE COURT: I'm sorry. What is your objection to?

8 MS. RHEE: Page 196, Your Honor, lines 13 through  
9 15.

10 THE COURT: I'm allowing that in.

11 Okay. Let's go.

12 MS. WOOD: They're in your binder, Your Honor.

13 THE COURT: All right.

14 (Video played.)

15 MS. WOOD: Okay. We pause here. It's just  
16 pausing to take out the objection.

17 (Video played.)

18 MS. WOOD: It's PTX 399.

19 (Video played.)

20 MS. WOOD: That's PTX 1520.

21 (Video played.)

22 MS. WOOD: This is PTX 395.

23 (Video played.)

24 MS. WOOD: This is PTX 3467.

25 THE COURT: Thank you.

Video Testimony Played - E. Lipkovitz

1 (Video played.)

2 (Video ended.)

3 THE COURT: Perfect timing.

4 MS. WOOD: Your Honor, may I just move a few  
5 exhibits in? Or I'm happy to do that in the morning as  
6 well.

7 THE COURT: I think we need to do it in the  
8 morning because I am concerned. My view is, if we're not  
9 using all of an exhibit, only those portions that we're  
10 actually using should be going into the permanent record of  
11 the case. So several of these exhibits, you were only  
12 taking portions of them.

13 So what I'm going to ask you to do, again, because  
14 I'm not formally admitting them at this time so you don't  
15 have the 10:00 tomorrow morning problem. Okay?

16 MS. WOOD: Thank you, Your Honor.

17 THE COURT: But these exhibits that we've talked  
18 about during this deposition -- we'll do that other stuff in  
19 a second -- I want you to make sure, first of all, that  
20 Ms. Rhee agrees with what you're doing. Redact them. All  
21 right? And then we'll put the redacted ones into the formal  
22 record.

23 MS. WOOD: So redact everything that was not  
24 discussed?

25 THE COURT: Exactly.

1 MS. WOOD: Understood, Your Honor.

2 THE COURT: All right. However, I think there are  
3 some other exhibits that were admitted today.

4 MS. WOOD: Yes, Your Honor.

5 THE COURT: Actually we still have a problem with  
6 something as well. Remember there was one -- where is it?

7 MS. WOOD: PTX 754?

8 THE COURT: I think that's it.

9 So Katie is going to read to you the exhibits  
10 other than the ones we discussed during this deposition.  
11 We're going to read the exhibits that we believe have been  
12 admitted. And there's one that I think only a portion of it  
13 comes in. All right?

14 MS. WOOD: The only other question I have, and I'm  
15 happy to do it in the morning instead, but we had talked  
16 about Mr. Lipkovitz was one of the individuals that we had  
17 agreed would not need to come in person; and, in exchange  
18 for that, we would, obviously, play his deposition.

19 But we also have some additional exhibits that  
20 were not played at his deposition. These have not been  
21 objected to by defense counsel, is my understanding. And I  
22 would like to move those into evidence. But I can do that  
23 in the morning.

24 THE COURT: No. Let's get that done tonight.

25 Hold on a second.

1 All right. Well, first, let's have Katie read the  
2 ones that we believe are in. Okay?

3 THE COURTROOM DEPUTY: PTX 754, DTX 404, DTX 382,  
4 DTX 655.

5 MS. WOOD: Yes. And I have in my notes, Your  
6 Honor, for PTX 754, only the laser email comes in, not the  
7 top email.

8 THE COURT: Correct. Okay. Thank you.

9 So those are the exhibits that were admitted  
10 today.

11 Were there any new demonstratives, or yesterday  
12 did you upload all the demonstratives?

13 MS. WOOD: There were no demonstratives for  
14 plaintiff.

15 MS. RHEE: No new demonstratives for Google.

16 THE COURT: All right.

17 MR. ISAACSON: Martha Goodman had the one where  
18 the red box went around.

19 MS. RHEE: Oh, sorry. Apologies. There was the  
20 additional --

21 THE COURT: That was done actively in court.

22 MS. RHEE: Correct.

23 THE COURT: Have you got a screenshot of that?

24 MS. RHEE: Yes, we have a screenshot, Your Honor.

25 THE COURT: What number is that?



1 MS. RHEE: That will be Friedman Demonstrative 1.

2 THE COURT: Okay. So that needs to be put on the  
3 web tonight. All right.

4 MS. RHEE: It will. And I thank my colleagues for  
5 reminding me.

6 THE COURT: That's great. So that takes care of  
7 that piece of housekeeping.

8 So tomorrow the first thing we'll do is get the  
9 exhibits worked out.

10 Then are you still -- I have on my list Arnaud  
11 Creput. That's to be a reading; is that correct?

12 MS. WOOD: So, Your Honor, tomorrow morning is one  
13 of those mornings where we accommodated a Google former  
14 employee for a specific start time. So that will be at  
15 9:00, first thing, Brad Bender.

16 THE COURT: All right. And he is a government  
17 witness. So --

18 MS. WOOD: Yes, he is, Your Honor. He's an  
19 adverse witness, but yes. And so that will be at 9:00.

20 And then what I think we will do is defer the  
21 Creput read-in to a later time, which we can negotiate with  
22 Google. It's ready to go, but we also have other -- a live  
23 witness, Professor Ravi. We may be calling Mr. Zeng. We'll  
24 let Google's counsel know tonight a final decision on  
25 whether we're calling Mr. Zeng or saving him for rebuttal.

1 THE COURT: All right.

2 MS. WOOD: Then we do have some additional videos.  
3 And then later in the afternoon, Mr. Dederick will be the  
4 first live witness for tomorrow.

5 THE COURT: Again. I just want a list. Tomorrow  
6 morning is fine.

7 MS. WOOD: Thank you, Your Honor.

8 THE COURT: Tomorrow is Wednesday. Let me just  
9 give you a heads-up. Wednesday and Thursday normal start  
10 time, 9:00. We'll go all day.

11 Friday morning, because I have now a couple of  
12 matters on my civil docket, we're going to start at 9:30.  
13 All right. So you can go to the bank on that.

14 Right now it looks as though Monday and Tuesday of  
15 next week, we can definitely start at 9:00. I'll let you  
16 know if something changes, but right now we're keeping it  
17 under control.

18 All right. I think that takes care of everything.

19 MS. WOOD: Do you want me to move the Lipkovitz  
20 additional ten in or do that in the morning?

21 THE COURT: There's no objection at all?

22 MS. RHEE: No.

23 THE COURT: All right. Let's get them in, then;  
24 then you can just post them tonight. All right.

25 MS. WOOD: So there are six exhibits that relate

1 to the subject of the tie between Google Ads and AdX.

2 THE COURT: All right.

3 MS. WOOD: The first one is PTX 183.

4 THE COURT: Go ahead.

5 MS. WOOD: The second one is PTX 264.

6 THE COURT: Okay.

7 MS. WOOD: PTX 290, PTX 330, PTX 443, PTX 1510.

8 Then there are two exhibits that relate to the AdX  
9 take rate. They are PTX 417, PTX 562.

10 The next relates to header bidding, PTX 533. And  
11 the last in association with Mr. Lipkovitz relates to  
12 barriers of entry to the advertiser ad network, and that's  
13 PTX 195.

14 THE COURT: All right. All of those exhibits are  
15 also in evidence at this point. All right. So they will  
16 also be posted before 10:00 tomorrow morning. Correct?

17 MS. WOOD: Thank you, Your Honor.

18 THE COURT: Anything further on this case? If  
19 not, we'll recess Court for the evening.

20 MS. WOOD: Thank you.

21 (Proceedings adjourned at 6:02 p.m.)

22 -----  
23 I certify that the foregoing is a true and  
24 accurate transcription of my stenographic notes.

25 /s/  
Rhonda F. Montgomery, CCR, RPR